

CONGRATULATORY RESOLUTIONS

S.R. 171 - By Ellis: Extending congratulations to attorney Singleton B. McAllister on her election to partnership in the firm of Reed Smith Shaw and McClay.

S.R. 172 - By Parker: Extending gratitude to physicians Robert Ojemann, Michael McKenna, Jeffery Terrell, Laurie Shapiro, Mack Cheney, and Daniel Townsend for care given to Kari Lynn McDonald; and to her husband, Ian Lynn, for his commitment and support.

S.R. 173 - By Parker: Recognizing Mr. Charles Johnson for his notable contributions to the American Association of Retired Persons for the past 10 years.

S.R. 174 - By Parker: Joining with the Veterans of Foreign Wars Post 1839 in honoring Louise Reid at a festive homecoming in Cleveland, Texas.

S.R. 175 - By Moncrief: Extending best wishes to Colonel Angel M. Rivera upon his retirement after 26 years of service as a member of the United States Air Force Reserve Officer Training Corps.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 5:02 p.m. adjourned until 11:30 a.m. tomorrow.

EIGHTEENTH DAY
(Wednesday, August 7, 1991)

The Senate met at 11:30 a.m. pursuant to adjournment and was called to order by the President.

The roll was called and the following Senators were present: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Harris of Dallas, Henderson, Johnson, Krier, Leedom, Lucio, Lyon, Moncrief, Montford, Parker, Ratliff, Rosson, Sibley, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

A quorum was announced present.

The Reverend Dr. James D. Rigby, St. Andrew's Presbyterian Church, Austin, offered the invocation as follows:

Lord, we pray for people in power. It is easy to feel righteous when we don't have real power. It is easy to feel pure when we are not faced with real choices, such as embracing the lesser of two evils or rejecting the lesser of two goods.

So, for every man and woman in the Texas Senate, we pray this day for wisdom, for courage, and for inner peace. Amen.

On motion of Senator Brooks and by unanimous consent, the reading of the Journal of the proceedings of yesterday was dispensed with and the Journal was approved.

SENATE BILLS AND RESOLUTION ON FIRST READING

The following bills and resolution were introduced, read first time and referred to the Committee indicated:

S.C.R. 17 by Glasgow Administration
Requesting the lieutenant governor and speaker of the house of representatives to establish a special interim committee to study agricultural and nonpoint source pollution problems.

S.B. 99 by Glasgow Jurisprudence
Relating to the assignment of certain former district judges as visiting judges.

S.B. 100 by Ratliff Administration
Relating to the disposition of the Morris County Hospital District's assets and liabilities on dissolution.

S.B. 101 by Ellis State Affairs
Relating to primary elections held in the year following issuance of the federal decennial census.

S.B. 102 by Glasgow, Harris of Tarrant State Affairs
Relating to the amended or supplemental designation of, and to local restrictions on, the premises on which alcoholic beverages may be sold.

MESSAGE FROM THE HOUSE

House Chamber
August 7, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

S.C.R. 14, In memory of Elmer H. Danner.

Respectfully submitted,
BETTY MURRAY, Chief Clerk
House of Representatives

**CONFERENCE COMMITTEE REPORT
ON HOUSE BILL 7**

Senator Brooks submitted the following Conference Committee Report:
Austin, Texas
August 7, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 7** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass.

BROOKS
MONCRIEF
KRIER
HARRIS OF TARRANT
LUCIO
On the part of the Senate

VOWELL
DELCO
LINEBARGER
WILLIAMSON
BARTON
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(Senator Armbrister in Chair)

MESSAGE FROM THE HOUSE

House Chamber
August 7, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

The House has refused to concur in Senate amendments to **H.B. 6** and has requested the appointment of a Conference Committee to consider the differences between the two Houses. The following have been appointed on the part of the House: Cavazos, Chair; Counts, Brimer, Junell, S. Thompson.

Respectfully submitted,
BETTY MURRAY, Chief Clerk
House of Representatives

CONFERENCE COMMITTEE REPORT ON HOUSE BILL 9

Senator Glasgow submitted the following Conference Committee Report:

Austin, Texas
August 7, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.B. 9** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GLASGOW
GREEN
HALEY
LEEDOM
ZAFFIRINI
On the part of the Senate

CAIN
EDWARDS
BLACK
PIERCE
On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

(President in Chair)

GUEST PRESENTED

The President acknowledged the presence of former Senator and Member of the House of Representatives Bill Moore of Bryan, Texas.

The Senate welcomed Senator Moore.

SENATE RESOLUTION 182

Senator Ellis offered the following resolution:

WHEREAS, The State of Texas lost one of its most outstanding citizens with the death of United States Congressman Mickey Leland on August 7, 1989; and

WHEREAS, It is appropriate on the second anniversary of Mr. Leland's death that the Texas Legislature pause to commemorate his life and to note his exceptional achievements; and

WHEREAS, Born November 27, 1944, Mickey Leland graduated from Phyllis Wheatley High School in Houston in 1963 and from Texas Southern University in 1970 with a bachelor of science degree in pharmacy; and

WHEREAS, He began his meteoric career as a member of the Texas Legislature from 1973 to 1978, representing the 88th District in the House of Representatives; he was then elected to the United States House of Representatives in November, 1978, and was reelected to each successive Congress until his death; and

WHEREAS, In his first term with the United States House of Representatives, he served as Freshman Majority Whip for the 96th Congress, and in the 97th Congress, he served as Majority Whip At-Large; he was then selected to be an At-Large Whip to the 100th Congress and to the 101st Congress of 1989-1990; and

WHEREAS, Appointed to the distinguished position of Chairman of the House Select Committee on Hunger, Congressman Leland presided over studies on domestic and international hunger and malnutrition and played an important role in reviewing and fostering relevant legislation; and

WHEREAS, Talented and knowledgeable in many areas, Mr. Leland also served on the Committee on Post Office and Civil Service and was a member of the Committee on Energy and Commerce where he served on the Subcommittees of Telecommunications and Finance, Health and the Environment, and Energy and Power; and

WHEREAS, Congressman Leland's notable achievements included introducing legislation which led to the creation of a program to assist households unable to afford telephone service, Link-Up America, and helping to secure \$1.36 million in federal funding for the State of Texas to use in the Women, Infants, and Children Program; and

WHEREAS, He also introduced the Homeless Persons' Survival Act, authored language in the School Lunch and Child Nutrition Amendments, cosponsored The Federal Equitable Pay Practices Act, and introduced a bill requiring the United States Postal Service to spend at least 15 percent of all contract dollars on contracting with disadvantaged business concerns; and

WHEREAS, He served as Chairman of the Congressional Black Caucus for the 99th Congress, introduced legislation to provide low-income mothers of infants and small children with coupons for fruits and vegetables at farmers' markets, and through Hands Across America, helped to secure grants of more than \$1 million for the State of Texas; and

WHEREAS, Energetic and generous, Mickey Leland devoted much of his life to helping those who were less fortunate; he died tragically in a plane crash on August 7, 1989, near Gambela, Ethiopia, while on a humanitarian mission to Fugnido refugee camp; and

WHEREAS, Earnest, dedicated, flamboyant, and successful, Mickey Leland was an exemplary achiever whose courageous spirit will continue to live on in the many accomplishments he left behind; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, 1st Called Session, hereby honor the memory of Congressman Mickey Leland and pay tribute to his life and career; and, be it further

RESOLVED, That a copy of this Resolution be prepared for his family as an expression of high regard from the Texas Senate.

ELLIS
JOHNSON

The resolution was read.

On motion of Senator Brooks and by unanimous consent, the names of the Lieutenant Governor and Senators were added to the resolution as signers thereof.

On motion of Senator Ellis and by unanimous consent, the resolution was adopted by a rising vote of the Senate.

SENATE RESOLUTION 181

Senator Haley offered the following resolution:

WHEREAS, The Senate of the State of Texas takes pride in recognizing Floyd Yancy for his selection as the 1991 recipient of the Distinguished Service Award, the highest recognition given by the National Association of County Agricultural Agents; and

WHEREAS, The Distinguished Service Award is an annual award presented to county agents throughout the nation for their outstanding contributions to the field of agriculture and related areas; and

WHEREAS, Mr. Yancy is a graduate of Prairie View A&M University and received a master's degree in agricultural education and sociology from Texas A&M University; and

WHEREAS, Well known for his expertise and dedication to his profession, he has served for 28 years with the Texas Agricultural Extension Service of the Texas A&M University System and is currently the Angelina County Extension Agent; and

WHEREAS, An acclaimed leader in his field, Floyd Yancy has worked with commodity groups and businesses in promoting and marketing horticulture crops and has developed programs in beekeeping, pasture and forage, weaning weights of beef calves, and farm pond catfish production; and

WHEREAS, Active in the community, he organized a County Farmers Market Association and was largely responsible for organizing the 4-H program in Angelina County and numerous programs for the Angelina County senior citizens; and

WHEREAS, Mr. Yancy is resourceful and committed to excellence and his many notable accomplishments undoubtedly will be of significant benefit to the welfare and future of our state; now, therefore, be it

RESOLVED, That the Senate of the State of Texas, 72nd Legislature, 1st Called Session, hereby commend Mr. Floyd Yancy for his exceptional achievements and congratulate him on receiving the Distinguished Service Award; and, be it further

RESOLVED, That a copy of this Resolution be prepared for him as a token of esteem from the Texas Senate.

The resolution was read and was adopted by a viva voce vote.

GUESTS PRESENTED

Senator Haley was recognized and introduced Floyd and Virginia Yancy to the Senate.

The Senate welcomed Mr. and Mrs. Yancy.

(Senator Glasgow in Chair)

GUEST PRESENTED

Senator Truan was recognized and introduced a distinguished former Member of the House of Representatives, Dr. Arnold Gonzales of Corpus Christi.

The Senate welcomed Dr. Gonzales.

GUESTS PRESENTED

Senator Brooks was recognized and introduced Harris County District Judge John H. Kyles of the 208th State District Court.

The Senate welcomed Judge Kyles.

Senator Brooks also introduced a delegation of the Harris County Democrats: Chairman Ed Cogburn, and The Honorable Billie Carr, Deputy Party Leader and current District Leader of the National Democratic Committee.

The Senate welcomed these guests.

(President in Chair)

GUESTS PRESENTED

Senator Tejeda was recognized and introduced the following recipients of the Purple Heart, who are here in recognition of August 7, 1991, as Purple Heart Day and in celebration of the medal's 209th anniversary: Patriots Frank Elmore, South Houston Texas State Commander and Mrs. Marie Elmore, Ladies Auxiliary member; Larry B. Mercer, Legislative Officer, State of Texas and Alamo Chapter Commander, San Antonio, Texas; Oscar Del Castillo, National Executive Committeeman and past Commander of the Alamo Chapter of the Purple Heart; Mona Del Castillo, Ladies Auxiliary President for the Alamo Chapter; Manuel Tijerina, Veterans Affairs Volunteer Service Officer; Mrs. Dolores Tijerina, Secretary of the Ladies Auxiliary; and Patriot Marvin Steitele and Mrs. Posey Steitele.

The Senate expressed a warm welcome to these guests.

An enrolled copy of S.R. 145, previously adopted by the Senate on August 2, 1991, was prepared for the occasion.

(Senator Ratliff in Chair)

CAPITOL PHYSICIAN

Senator Sims was recognized and presented Dr. Ernie Lamar Sandidge of McCamey as the "Doctor for the Day."

The Senate welcomed Dr. Sandidge and thanked him for his participation in the "Capitol Physician" program sponsored by the Texas Academy of Family Physicians.

(President in Chair)

CONFERENCE COMMITTEE ON HOUSE BILL 6

Senator Harris of Dallas called from the President's table for consideration at this time the request of the House for a Conference Committee to adjust the differences between the two Houses on H.B. 6 and moved that the request be granted.

The motion prevailed.

The President asked if there were any motions to instruct the Conference Committee on H.B. 6 before appointment.

Senator Parker submitted a Motion in Writing to instruct the Conference Committee on H.B. 6 and requested a full reading of the Motion in Writing.

On motion of Senator Brooks and by unanimous consent, the full reading of the Motion in Writing was dispensed with.

THE TEXAS SENATE SUBCOMMITTEE ON INSURANCE

August 6, 1991

MOTION IN WRITING TO INSTRUCT CONFERENCE COMMITTEE

I move to instruct the Conference Committee appointed to resolve the difference in H.B. 6 to include the amendments attached hereto in H.B. 6 and, when necessary, require the House to submit a resolution to go outside the bounds of those matters contained in H.B. 6.

Respectfully submitted,

/s/Carl A. Parker

Amendment No. 1

Amend C.S.H.B. 6 by striking Article 1 of the bill and substituting the following:

ARTICLE 1. GUARANTY FUNDS AND LIQUIDATION OF INSURERS

SECTION 1.01. Section 1, Article 21.28, Insurance Code, is amended by amending Subsection (d) and adding Subsection (g) to read as follows:

(d) "Liquidator" means "receiver." The term includes the commissioner of insurance or the person designated by the commissioner of insurance to act as special deputy receiver [State Board of Insurance as liquidator].

(g) "Person" means an individual, association, corporation, partnership, or other private legal entity.

SECTION 1.02. Sections 2(a), (d), and (h), Article 21.28, Insurance Code, are amended to read as follows:

(a) Receiver Taking Charge. Whenever under the law of this State a court of competent jurisdiction finds that a receiver should take charge of the assets of an insurer domiciled in this State, the commissioner of insurance or a person designated by the commissioner under contract [liquidator designated by the State Board of Insurance as hereinafter provided for] shall act as [be such] receiver. The [liquidator so appointed] receiver shall forthwith take possession of the assets of such insurer and deal with the same in the person's [his] own name as receiver or in the name of the insurer as the court may direct. The receiver has the powers

specified in this code. A person designated by the commissioner to act as special deputy receiver under contract is subject to the performance standards imposed by this subsection. The special deputy receiver shall submit monthly written reports to the court and commissioner that state the special deputy receiver's business plan for the receivership, including expenses incurred in administering the receivership during the preceding month and an estimate of those expenses for the succeeding month. The report must include a cost-benefit analysis on the expenditure of funds other than funds spent for the payment of claims. The business plan report must include a budget of monthly expenses that explains any variation from the original projection. In addition to the business plan report, the special deputy receiver shall submit a monthly report to the commissioner relating to the special deputy receiver's activities in administering the receivership. The special deputy receiver must submit to performance audits and financial audits on a semiannual basis until January 1, 1994, and subsequently on an annual basis or more frequently as directed by the commissioner. The special deputy receiver must promptly investigate and report to the appropriate enforcement authorities any and all information relating to possible fraudulent, deceptive, or otherwise unlawful conduct discovered in the administration of the receivership.

(d) Bonds. The receiver shall be responsible ~~for~~ on his official bond hereinafter provided for for all assets coming into his possession. The court may require a ~~an~~ an additional bond, or bonds, from the said receiver, and, if deemed desirable for the protection of the assets, may require a bond, or bonds, of any special deputy receiver ~~liquidator~~, or other assistant or employee appointed by or under the authority of this Article.

(h) Depositories. Except as provided by this subsection, all [All] money collected by the receiver shall be forthwith deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The receiver may deposit the money in any bank, banks, or savings and loan association or associations in this State insured by a federal agency that provides for deposit insurance if the receiver, in the exercise of sound financial judgment, determines that it would be advantageous to do so [which are members of the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation]. The funds collected or realized from the assets of each insurer for which the receiver has been appointed shall be accounted for by the receiver separately [kept separate and apart] from all other funds. Whenever any account in a [any such] bank or savings and loan association exceeds the maximum amount insured by the appropriate federal agency [said Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation], the receiver is hereby authorized and directed to make such contracts and require such security as it may deem proper for the safeguarding of such deposit without [upon] approval of the court.

SECTION 1.03. Section 3, Article 21.28, Insurance Code, is amended by adding Subsection (i) to read as follows:

(i) Notwithstanding any other provision of this article, if a claim is covered by a guaranty fund created under Article 9.48, 21.28-C, or 21.28-D of this code, the receiver shall refer the claim to the appropriate guaranty association for processing. Each guaranty association is an insurer for purposes of insurance claims payments and is subject to Section 11.03 Chapter 242, Acts of the 72nd Legislative, Regular Session, 1991.

SECTION 1.04. Section 8A, Article 21.28, Insurance Code, is amended to read as follows:

Sec. 8A. SETTLEMENT OF CLAIMS; ABANDONED FUNDS; RE-OPENING OF RECEIVERSHIPS. Any and all assets other than cash remaining in the receiver's hands after payment of the final dividend may be

conveyed, transferred or assigned to the commissioner [State Insurance Liquidator and his successors in office;] to be handled as a trust. The commissioner [State Insurance Liquidator] shall have authority to convey, transfer, and assign any assets, including causes of action, judgments, and claims, and to settle or release causes of action, judgments, claims, and liens on such terms and for such amounts as he deems for the best interest of such trust, whether such assets have heretofore or may hereafter come into his hands. From proceeds derived from any such assets the commissioner or the special deputy receiver [Liquidator] shall defray the costs incident to the sale, settlement, release or other transaction whereby such proceeds are obtained, and deliver the remainder to the Board to be deposited by it in trust in a special account to be maintained with the State Treasurer to be handled, disposed of and used as follows:

An order directing disposition of such funds may be made by a court of competent jurisdiction of Travis County, Texas, upon application of the commissioner [Liquidator], after notice and hearing. Notice shall be posted on the courthouse door of said court for at least twenty (20) days before a hearing is had on the commissioner's [Liquidator's] application, and notice shall be published at least once, and at least ten (10) days prior to the date set for such hearing, in a newspaper of general circulation in Travis County. Such notice shall state the amount of the funds and the receivership from which they were derived. It shall be addressed to all persons having an interest, as claimant or otherwise, in the assets of the particular receivership involved in the application, and shall state generally that a hearing shall be had on the date specified for the purpose of determining the disposition to be made of such funds, including a declaration that such funds are abandoned and the property of the State Board of Insurance.

If the court finds that funds derived from any receivership are sufficient to justify re-opening of the receivership and payment of a dividend, then such may be ordered, but otherwise, if such funds are insufficient for that purpose, the court may declare such funds abandoned and a certified copy of such judgment will be authority for the Comptroller of Public Accounts to issue a Warrant therefor to the State Board of Insurance. The Board shall forthwith deposit such funds in accordance with the provisions of Section 2(h) of this Article, except that funds derived from one insurer need not be kept separate from funds derived through any other insurer.

Such funds may be used as provided in Section 8(j) of this Article.

SECTION 1.05. Section 9(c), Article 21.28, Insurance Code, is amended to read as follows:

(c) ~~[No]~~ Limitation. Except as otherwise provided by this subsection, each ~~[Each]~~ receivership or other delinquency proceeding prescribed by this Article shall be administered in accordance with Section 64.072, Civil Practice and Remedies Code. To the extent a receivership or delinquency proceeding initiated against an insurer applies to claims against a workers' compensation insurance policy or a title insurance policy, the receivership or delinquency proceeding shall be administered continuously [hereunder] for whatever length of time is necessary to effectuate its purposes, and no[. No] arbitrary period prescribed elsewhere by the laws of Texas limiting the time for the administration of receiverships or of corporate affairs generally shall be applicable thereto. Instead of the winding up and distribution of a receivership estate of an insurer without capital stock, the court shall order revival and reinstatement of the charter, permits, licenses, franchises, and management contracts or other control instruments of the insurer if the insurer's remaining cash on hand and on deposit, less any outstanding valid and enforceable liabilities, exceeds the minimum amount of capital and surplus prescribed for that insurer under Article 2.02 or Section 1 of Article 3.02 of this code.

SECTION 1.06. Sections 11(a) and (b), Article 21.28, Insurance Code, are amended to read as follows:

(a) Records Admitted. All books, records, documents and papers of any delinquent insurer received by the receiver [liquidator] and held [by him] in the course of the delinquency proceedings, or certified copies thereof, under the hand and official seal of the Board and/or receiver [liquidator], shall be received in evidence in all cases without proof of the correctness of the same and without other proof, except the certificate of the Board and/or receiver [liquidator] that the same was received from the custody of the delinquent insurer or found among its effects.

(b) Certificates. The receiver [liquidator] shall have the authority to certify to the correctness of any paper, document or record of the receiver's [his] office, including those described in (a) of this section, and to make certificates under seal of the Board and certified by the receiver [liquidator] certifying to any fact contained in the papers, documents or records of the Texas Department [Liquidation Division of the State Board] of Insurance; and the same shall be received in evidence in all cases in which the originals would be evidence.

SECTION 1.07. Section 12, Article 21.28, Insurance Code, as amended by Chapter 242, Acts of the 72nd Legislature, Regular Session, 1991, is amended by amending Subsections (a), (b), and (c) and adding Subsection (h) to read as follows:

(a) Special Deputy Receiver [Liquidator], Bond. A special deputy receiver appointed by the commissioner under this article shall file with the commissioner a bond in an amount established by the commissioner, payable to the commissioner for the benefit of injured parties, and conditioned on the faithful performance of the special deputy receiver's duties and the proper accounting for all moneys and properties received or administered by the special deputy receiver. [The liquidator herein named shall be appointed by the State Board of Insurance, and shall be subject to removal by said Board, and before entering upon the duties of said office, shall file with the Board a bond in the sum of Ten Thousand Dollars (\$10,000), payable to the Board for the benefit of injured parties, and conditioned upon the faithful performance of his duties and the proper accounting for all moneys and properties received or administered by him.]

(b) Appointments, Expenses. The commissioner may appoint, set the compensation of, and contract with one or more qualified special deputy receivers to act for the commissioner under this code. In making an appointment under this section, the commissioner shall attempt to reflect the ethnic, racial, and geographic diversity of the state. A special deputy receiver has all the powers of the receiver granted by this code, unless limited by the commissioner. [The Board shall have the power to appoint and fix the compensation of the liquidator and of such special deputy liquidators, counsel, clerks, or assistants, as it may deem necessary.] The payment of such compensation and all expenses of liquidation shall be made by the commissioner [liquidator] out of funds or assets of the insurer [on approval of the Board]. An itemized report of such expenses, sworn to by the commissioner or a special deputy receiver [liquidator and approved by the Board], shall be presented on a monthly basis to the court [from time to time], which account shall be approved by the court unless objection is filed thereto within ten (10) days after the presentation of the account. The objection, if any, must be made by a party at interest and shall specify the item or items objected to and the ground of such objection. The court shall set the objection down for hearing, notifying the parties of the setting. The burden of proof shall be upon the party objecting to show that the items objected to are improper, unnecessary or excessive.

(c) Filing Reports. The receiver [Said liquidator] shall file reports with the Board upon its request showing the operation, receipts, expenditures, and general condition of any organization of which the receiver [he] may have charge at that time, and, upon request, shall file a copy of said report with the court in which said receivership proceeding is pending. The receiver [He] shall also file a final report of each organization which [he] has been liquidated or handled showing all receipts

and expenditures, and giving a full explanation of the same and a true statement of the disposition of all of the assets of each organization.

(h) A special deputy receiver appointed by the commissioner serves at the pleasure of the commissioner. Unless restricted by the commissioner, a special deputy receiver may perform any act on behalf of the commissioner. If expressly authorized by the commissioner, a special deputy receiver may employ employees and agents, legal counsel, actuaries, accountants, appraisers, consultants, and other personnel as the special deputy receiver considers necessary to assist in the performance of the receiver's duties. The expenses of employing those persons are expenses of the receivership payable out of funds or assets of the insurer.

SECTION 1.08. Section 12A(a), Article 21.28, Insurance Code, as amended by Section 23, Chapter 641, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) It is the sense of the Legislature, as necessary to state policy, that facilities be immediately and continually available to meet any or all of the requirements of preparing for, placing in, continuing or completing any liquidation, rehabilitation, reorganization or conservation of insurers, and in order to make such provision and to provide that the Liquidator and employees be used for other Insurance Department duties when not involved in liquidation or conservation matters, the Legislature may make provisions for the Liquidator and employees and their expenses, in whole or in part, by making appropriations therefor, or by appropriating or permitting use of funds, other than funds or assets of insurers being liquidated, rehabilitated, reorganized or conserved, which are received by or made available to the Board, or by establishing disappearing or partially or wholly reimbursable revolving funds in the Appropriation Acts, notwithstanding any other provision of Article 21.28 of Chapter 21 of the Insurance Code. This subsection expires January 1, 1994.

(a-1) The provisions of this Act are cumulative of existing law and in the event of conflict the provisions of this Act shall govern.

SECTION 1.09. Section 5(2)A, Article 9.48, Insurance Code, is amended to read as follows:

A. "Covered claim" is an unpaid claim:

(i) of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state;

(ii) against trust funds or an escrow account of an impaired insurer which arises due to a shortage of those funds or in that account;

(iii) for which an impaired insurer is liable in connection with the fidelity of any agent of that insurer as authorized by Article 9.49 of this code; or

(iv) against trust funds or an escrow account of an impaired agent which arises due to a shortage of those funds or in that account and which shall be paid only from funds derived from guaranty fees and not from assessments.

A "covered claim" [Individual "covered claims"] under Subparagraphs (i) and (iii) of this paragraph shall be limited to the lesser of \$250,000 per claimant or \$250,000 per policy [~~and shall not include any amount in excess of \$250,000 per claimant~~]. The amount of a "covered claim" under Subparagraph (ii) and [or] (iv) of this paragraph is the amount of the unpaid claim up to and not to exceed, the lesser of:

~~[(ii)] the amount of funds actually delivered to the impaired insurer or agent as trust funds or an escrow account for each claimant in a transaction from which the claim arises[;] or~~

~~[(iii)] \$250,000 per claimant, provided that the cumulative amount of covered claims arising from one transaction may not exceed \$250,000.~~

SECTION 1.10. Article 9.48, Insurance Code, is amended by adding Section 6A to read as follows:

Sec. 6A. DEPOSIT OF ASSESSMENTS. All assessments collected by the association may be deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.

SECTION 1.11. Section 7, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 7. ASSESSMENTS [ADMINISTRATION]. (a) Whenever the commissioner determines that an insurer or agent has become impaired, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer or agent immediately available to the receiver or the conservator for the purpose of making payment of all covered claims and administrative expenses. The receiver or conservator shall advise the board of those estimates.

(b) The association shall assess insurers amounts necessary to pay the obligations of the association under this article subsequent to an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this article. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers and for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than 30 days before it is due. No member insurer may be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated and the unpaid portion shall be paid as soon thereafter as funds become available.

(c) The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance. During the period of deferment, no dividends may be paid to shareholders or policyholders. Deferred assessments shall be paid when such payment will not reduce capital or surplus below required minimums. These payments shall be refunded to those companies receiving larger assessments by virtue of such deferment, or at the election of any such company, credited against future assessments [and the board shall make available from the appropriate account maintained by the association funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims and administrative expenses of the impaired insurer or agent. The board shall make additional funds available as the actual need for those funds arises for each impaired insurer or agent.]

~~[If the board has determined that additional funds are needed in the administrative or title account it shall advise the commissioner who shall make such assessments as may be needed to produce the necessary funds. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer]. No assessment shall be made to produce funds for the guaranty fee account but such funds shall be derived solely from guaranty fees as provided by Section 6 of this article.~~

~~[The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. The commissioner shall determine the total net direct written premiums of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.~~

~~[Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.~~

~~[The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the association within 30 days after the commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.~~

~~[Funds derived from assessments or from guaranty fees under the provisions of this article shall not become assets of the impaired insurer or agent but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims or administrative expenses, which loan shall be repayable to the extent available from the funds of such impaired insurer or agent, as herein provided.]~~

~~(d) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14(a)(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess insurers to attain the needed funds in the same manner provided by this section.~~

~~(e) No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the association [commissioner] under the provisions of this Article 9.48.~~

~~SECTION 1.12. Section 9, Article 9.48, Insurance Code, is amended to read as follows:~~

~~Sec. 9. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS.~~

~~(a) Upon receipt from an insurer of payment of an assessment or partial assessment,~~

the association shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The association ~~[receiver or conservator of any impaired insurer]~~ shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any, from the funds collected by assessment. The association ~~[receiver or conservator]~~ shall also make any interim reports concerning such accounting as may be required by the commissioner or requested by the association. Upon completion of the final report, the association ~~[receiver or conservator]~~ shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

(b) Should the association at any time determine that money exists in the administrative account or the title account in excess of the amount reasonably necessary for efficient future operation under the terms of this article, it shall cause the excess money to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized by Section 15 of this article. The amount deducted for those credits shall be deposited with the state treasurer for credit to the general fund of this state. Any excess money remaining after the distribution shall be retained by the association in the guaranty fee account and held pursuant to this article.

SECTION 1.13. Section 10, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 10. ADMINISTRATION AND PAYMENT OF COVERED CLAIMS.

(a) The association shall pay covered claims existing before the determination of the impairment or arising on or before the date three years after the determination of impairment.

(b) The association may not pay a claimant an amount in excess of the obligation of the impaired insurer or agent under the policy or coverage from which the claim arises.

(c) Notwithstanding any other provisions of this article, a covered claim does not include a claim filed with the guaranty fund after the final date set by the court for the filing of claims against the receiver of an impaired insurer or agent.

(d) The association stands in the place of the impaired insurer or agent to the extent of its obligation on the covered claims and, to that extent, has all rights, duties, and obligations of the impaired insurer or agent as if the insurer or agent had not become impaired.

(e) The association shall investigate claims brought against the association, adjust, compromise, settle, and pay covered claims to the extent of the association's obligation, and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or agent or its insureds were parties to determine the extent to which the settlements, releases, and judgments are contested.

(f) The association shall pay claims in any order it may deem reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims.

(g) The association shall establish, subject to the approval of the commissioner, procedures by which claims may be filed with the association and acceptable forms of proof of covered claims. Notice of claims to the receiver of the impaired insurer

or agent shall be deemed notice to the association or its agent and a list of claims shall be periodically submitted to the association or similar organization in another state by the receiver.

(h) The association may handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner. Designation as a servicing facility may be declined by a member insurer. The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association. [When an insurer or agent has been designated by the commissioner as impaired, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer or agent, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of covered claims as provided by Section 7 of this article, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments and second in repayment of funds derived from guaranty fees. Such repayments of funds expended from assessments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.]

[In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.]

[This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.]

SECTION 1.14. Section 12(b), Article 9.48, Insurance Code, is amended to read as follows:

(b) Notwithstanding any provision to the contrary, the association [receiver or conservator], for the purpose of avoiding undue hardship to a claimant, subject to

the approval of the receivership court or the commissioner, as the case may be, may authorize payment of covered claims against an impaired agent without regard to the liability of any insurer or to coverage under any insurance policy. On payment, the association [receiver or conservator] is in all respects subrogated to the rights and claims of the claimant.

SECTION 1.15. Section 14, Article 9.48, Insurance Code, is amended by adding Subsection (f) to read as follows:

(f) Delegation of powers and duties. The plan of operation may provide that any or all powers and duties of the association, except those under Sections 7 and 14(c)(3) of this article, may be delegated to a corporation, association, or other organization that performs or will perform functions similar to those of the association or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for its performance of any other functions of the association. A delegation under this subsection may take effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this article.

SECTION 1.16. Section 14(e)(3), Article 9.48, Insurance Code, is amended to read as follows:

(3) The board shall advise and counsel with the commissioner upon matters relating to the solvency of insurers and agents. The commissioner shall call a meeting of the board when he determines that an insurer or agent is insolvent or impaired and may call a meeting of the board when he determines that a danger of insolvency or impairment of an insurer or agent exists. Such a meeting is not open to the public and only members of the board of directors, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings. The board shall notify the commissioner of any information indicating that an insurer or agent may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer or agent. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer or agent, or an insurer or agent the commissioner considers to be in danger of insolvency or impairment, to appear before the board for conference or for the taking of testimony. Members of the board shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of these meetings shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of a board member.

The board shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer or agent and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer or agent and relating to the [amount and timing of partial assessments and the] marshalling of assets [and the processing and handling of covered claims].

SECTION 1.16b. Section 17, Article 9.48, Insurance Code, is amended to read as follows:

Sec. 17. IMMUNITY FROM LIABILITY. Any member insurer, the association or its agents or employees, the board of directors, or the commissioner

or the commissioner's representatives shall not be personally liable for any act performed in good faith within the scope of his or her authority or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious.

~~Sec. 17. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association or its agents or employees, the association or its agents or employees, members of directors, or the commissioner or his representatives for any action taken or not taken by them in the performance of their powers and duties under this article.~~

SECTION 1.17. Article 9.48, Insurance Code, is amended by amending Section 20 and adding Section 20A to read as follows:

Sec. 20. APPEALS. (a) A member insurer may appeal any action or ruling of the association relating to an assessment made under this article to the commissioner.

(b) Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended.

(c) The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

(d) Venue in a suit against the association relating to any action or ruling of the association made under this article is in Travis County. The association is not required to give an appeal bond in an appeal of a cause of action arising under this article.

Sec. 20A. TAX EXEMPTION. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

SECTION 1.18. Section 5(2)C, Article 9.48, Insurance Code, is repealed.

SECTION 1.19. Section 11, Article 9.48, Insurance Code, is amended to read as follows:

Approval of covered claims

Sec. 11. Funds [Covered claims against an impaired insurer or agent placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending, provided, however, that funds] received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claims [approved by the receiver] and the amount of the assets marshalled by the receiver for payment to holders of covered claims. In[; and provided further that in] ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims [approved by the ancillary receiver] and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state.

If a conservator is appointed to handle the affairs of an impaired insurer or agent, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer or agent. If the records of the impaired insurer or agent do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his

claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer or agent has been placed in conservatorship, the funds received from assessments or from guaranty fees shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be unliquidated or undetermined, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the association ~~[receiver or conservator]~~ by the holder of a covered claim or the acceptance of the benefits of contracts ~~[negotiated]~~ by the court ~~[receiver]~~ or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the association ~~[impaired insurer or agent]~~ of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the association ~~[impaired insurer or agent]~~ may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

SECTION 1.20. Article 21.28-C, Insurance Code, is amended to read as follows:

Art. 21.28-C. PROPERTY AND CASUALTY INSURANCE
GUARANTY ACT

Sec. 1. SHORT TITLE. This article shall be known as the Texas Property and Casualty Insurance Guaranty Act.

Sec. 2. PURPOSE. The purpose of this Act is to:

(1) provide a mechanism for the payment of covered claims under certain insurance policies to avoid excessive delay in payment;

(2) avoid financial loss to claimants or policyholders because of the impairment of an insurer;

(3) assist in the detection and prevention of insurer insolvencies; and
(4) provide an association to assess the cost of that protection among
insurers.

Sec. 3. SCOPE. This Act applies to all kinds of direct insurance, but is not
applicable to the following:

(1) life, annuity, health, or disability insurance;
(2) mortgage guaranty, financial guaranty, or other forms of
insurance offering protection against investment risks;
(3) fidelity or surety bonds, or any other bonding obligations;
(4) credit insurance, vendors' single-interest insurance, collateral
protection insurance, or any similar insurance protecting the interests of a creditor
arising out of a creditor-debtor transaction;
(5) insurance of warranties or service contracts;
(6) title insurance;
(7) ocean marine insurance;
(8) any transaction or combination of transactions between a person,
including an affiliate of such a person, and an insurer, including an affiliate of such
an insurer, that involves the transfer of investment or credit risk unaccompanied
by transfer of insurance risk; or
(9) any insurance provided by or guaranteed by government.

Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the
purposes under Section 2 of this Act, which will constitute an aid and guide to
interpretation.

Sec. 5. DEFINITIONS. In this Act:

(1) "Account" means any one of the three accounts created under
Section 6 of this Act.

(2) "Affiliate" means a person who, directly or indirectly, through one
or more intermediaries, controls, is controlled by, or is under common control with
an impaired insurer on December 31 of the year next preceding the date the insurer
becomes an impaired insurer.

(3) "Association" means the Texas Property and Casualty Insurance
Guaranty Association.

(4) "Board" means the board of directors of the association.

(5) "Claimant" means any insured making a first-party claim or any
person instituting a liability claim. A person who is an affiliate of the impaired
insurer may not be a claimant.

(6) "Commissioner" means the commissioner of insurance.

(7) "Control" means the possession, direct or indirect, of the power
to direct or cause the direction of the management and policies of a person, whether
through the ownership of voting securities, by contract other than a commercial
contract for goods or nonmanagement services, or otherwise, unless the power is the
result of an official position with or corporate office held by the person. Control is
presumed to exist if any person, directly or indirectly, owns, controls, holds with
the power to vote, or holds proxies representing 10 percent or more of the voting
securities of any other person. This presumption may be rebutted by a showing that
control does not exist in fact.

(8) "Covered claim" means an unpaid claim of an insured or
third-party liability claimant that arises out of and is within the coverage and not
in excess of the applicable limits of an insurance policy to which this Act applies,
issued or assumed (whereby an assumption certificate is issued to the insured) by
an insurer licensed to do business in this state, if that insurer becomes an impaired
insurer and the third-party claimant or liability claimant or insured is a resident of
this state at the time of the insured event, or the property from which the claim arises
is permanently located in this state. "Covered claim" shall also include 75 percent

of unearned premiums, but in no event shall a covered claim for unearned premiums exceed \$1,000. Individual covered claims shall be limited to \$100,000, except that the association shall pay the full amount of any covered claim arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including adjustment fees and expenses, attorney's fees and expenses, court costs, interest and penalties, and interest and bond premiums incurred prior to the determination that an insurer is an impaired insurer under this Act. "Covered claim" shall not include any punitive, exemplary, extracontractual, or bad-faith damages awarded in a court judgment against an insured or insurer. With respect to a covered claim for unearned premiums, both persons who were residents of this state at the time the policy was issued and persons who are residents of this state at the time the company is found to be an impaired insurer shall be considered to have covered claims under this Act. Where the impaired insurer has insufficient assets to pay the expenses of administering the receivership or conservatorship estate, that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a covered claim under this Act.

(9) "Impaired insurer" means:

(A) a member insurer that is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency and that has been designated an impaired insurer by the receiver; or

(B) a member insurer placed in conservatorship after it has been determined by the commissioner to be insolvent and that has been designated an impaired insurer by the receiver.

(10) "Member insurer" means any person who:

(A) writes any kind of insurance to which this Act applies under Section 3 of this Act, including the exchange of reciprocal or inter-insurance contracts; and

(B) is licensed to transact insurance in this state.

(11) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which this Act applies, less return premiums on those policies and dividends paid or credited to policyholders on that direct business. The term does not include premiums on contracts between insurers or reinsurers.

(12) "Person" means any individual, corporation, partnership, association, or voluntary organization.

Sec. 6. ASSOCIATION. The Texas Property and Casualty Insurance Guaranty Association is a nonprofit, unincorporated legal entity composed of all member insurers, who must be members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under a plan of operation approved under Section 9 of this Act and shall exercise its powers through the board of directors. For purposes of administration and assessment, the association is divided into the workers' compensation insurance account, the automobile insurance account, and the account for all other lines of insurance to which this Act applies.

Sec. 7. BOARD OF DIRECTORS. (a) The board of directors of the association is composed of nine persons who serve terms as established in the plan of operation. Five members shall be selected by member insurers, subject to the approval of the commissioner. The remaining members shall be representatives of the general public appointed by the commissioner. Vacancies on the board shall be

filled for the remaining period of the term by a majority vote of the remaining board members, subject to the approval of the commissioner.

(b) In approving selections to the board, the commissioner shall consider whether all member insurers are fairly represented.

(c) Members of the board of directors may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors.

(d) A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the Texas Department of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

(e) Each member of the board of directors shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

Sec. 8. POWERS AND DUTIES OF ASSOCIATION. (a) The association shall pay covered claims that exist before the designation of impairment or arising within 30 days after the designation of impairment, or before the policy expiration date if less than 30 days after the designation of impairment, or before the insured replaces the policy or causes its cancellation, if the insured does so not later than the 30th day after the date of the designation. The obligation is satisfied by paying to the claimant the full amount of a covered claim for benefits.

(b) The association is considered the insurer to the extent of its obligation on the covered claims and to that extent has all rights, duties, and obligations of the impaired insurer as if the insurer had not become impaired.

(c) The association shall assess insurers amounts necessary to pay the obligations of the association under Subsection (a) of this section after an insolvency, the expenses of handling covered claims subsequent to an insolvency, and other expenses authorized by this Act. The assessments of each member insurer shall be in the proportion that the net direct written premiums of the member insurer for the calendar year preceding the assessment bears to the net direct written premiums of all member insurers for the calendar year preceding the assessment. Each member insurer shall be notified of the assessment not later than the 30th day before the date on which the assessment is due. A member insurer may not be assessed in any year an amount greater than two percent of that member insurer's net direct written premiums for the calendar year preceding the assessment. If the maximum assessment, with the other assets of the association, does not provide in any one year an amount sufficient to make all necessary payments, the funds available shall be prorated, and the unpaid portion shall be paid as soon thereafter as funds become available. The association shall pay claims in any order it considers reasonable, including the payment of claims as they are received from the claimants or in groups or categories of claims. The association may exempt or defer, in whole or in part, the assessment of any member insurer if the assessment would cause the member insurer's financial statement to reflect amounts of capital or surplus less than the minimum amounts required for a certificate of authority by any jurisdiction in which the member insurer is authorized to transact insurance; provided, however, that during the period of deferment, dividends may not be paid to shareholders or policyholders. Deferred assessments shall be paid when the payment will not reduce capital or surplus below required minimums. The payments shall be refunded to those companies receiving larger assessments by virtue of the deferment, or at the election of such a company, credited against future assessments.

(d) The association shall investigate claims brought against the association and shall adjust, compromise, settle, and pay covered claims to the extent of the association's obligation and deny all other claims. The association may review settlements, releases, and judgments to which the impaired insurer or its insureds were parties to determine the extent to which those settlements, releases, and judgments may be properly contested.

(e) The association shall give notice as the commissioner directs under Section 10(c) of this Act.

(f) The association shall handle claims through its employees or through one or more insurers or other persons designated as servicing facilities. Designation of a servicing facility is subject to the approval of the commissioner, but such a designation may be declined by a member insurer.

(g) The association shall reimburse each servicing facility for obligations of the association paid by the facility and for expenses incurred by the facility while handling claims on behalf of the association and shall pay the other expenses of the association authorized by this Act.

(h) The association may:

(1) employ or retain persons as necessary to handle claims and perform other duties of the association;

(2) borrow funds necessary to implement this Act in accordance with the plan of operation;

(3) sue or be sued;

(4) negotiate and become a party to contracts as necessary to implement this Act;

(5) perform other acts as necessary or proper to implement this Act;
or

(6) refund to the member insurers in proportion to the contribution of each member insurer to the association that amount by which the assets of the association exceed the liabilities, if at the end of any calendar year the board of directors finds that the assets of the association exceed the liabilities of the association as estimated by the board of directors for the coming year.

(i) If a member insurer is insolvent, the association shall provide the money, pledges, guarantees, or other means as are reasonably necessary to discharge the duties of that insurer and:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of that insurer; or

(2) assure payment of the contractual obligations of that insurer.

(j) The board of directors may deposit all money collected by the association into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.

Sec. 9. PLAN OF OPERATION. (a) The association shall submit to the commissioner a plan of operation and any amendments necessary or suitable to ensure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments take effect on approval in writing by the commissioner.

(b) If the association fails to submit suitable amendments to the plan, the commissioner, after notice and hearing, shall adopt reasonable rules as necessary or advisable to implement this Act. Those rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

(c) All member insurers shall comply with the plan of operation.

(d) The plan of operation must:

(1) establish the procedures under which the powers and duties of the association are performed;

(2) establish procedures for handling assets of the association;

(3) establish the amount and method of reimbursing members of the board of directors;

(4) establish procedures by which claims may be filed with the association; and

(5) establish acceptable forms of proof of covered claims.

(c) Notice of claims to the receiver of the impaired insurer constitutes notice to the association or its agent. A list of claims shall be submitted periodically to the association or similar organization in another state by the receiver.

(f) The plan of operation must:

(1) establish regular places and times for meetings of the board of directors;

(2) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(3) provide that any member insurer aggrieved by any final action or decision of the association may appeal to the commissioner not later than the 30th day after the date of the action or decision;

(4) establish the procedures under which selections for the board of directors are submitted to the commissioner; and

(5) contain additional provisions as necessary or proper for the execution of the powers and duties of the association.

(g) The plan of operation may provide that any or all powers and duties of the association, except those under Section 8(c) and 8(h)(2) of this Act, are delegated by contract to a corporation, association, or other organization that performs or will perform functions similar to those of the association or its equivalent in two or more states. The corporation, association, or organization shall be reimbursed as a servicing facility would be reimbursed and shall be paid for the performance of any other functions of the association. A delegation under this subsection takes effect only with the approval of both the board of directors and the commissioner and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this Act. A contract entered into under this subsection is subject to the performance standards imposed under Section 2(a), Article 21.28, of this code.

Sec. 10. DUTIES AND POWERS OF COMMISSIONER. (a) The commissioner shall notify the association of the existence of an impaired insurer not later than three days after the commissioner gives notice of the designation of impairment. The association is entitled to a copy of any complaint seeking an order of liquidation with a finding of insolvency against a member company at the same time that the complaint is filed with a court of competent jurisdiction.

(b) On request of the board of directors, the commissioner shall provide the association with a statement of the net direct written premiums of each member insurer.

(c) The commissioner may require that the association notify the insureds of the impaired insurer and any other interested parties of the designation of impairment and of their rights under this Act. The notification shall be by mail at the last known address, if available, but if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation is sufficient.

(d) The commissioner shall suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or otherwise fails to comply with the plan of operation. As an alternative, the commissioner may assess a fine on any member

insurer that fails to pay an assessment when due. The fine may not exceed the lesser of five percent of the unpaid assessment per month or \$100 per month.

(e) The commissioner may revoke the designation of any servicing facility if the commissioner finds that claims are being handled unsatisfactorily.

(f) Any final action or order of the commissioner under this Act is subject to judicial review by a court of competent jurisdiction.

(g) Venue in a suit against the association relating to any action or ruling of the association made under this Act is in Travis County. The association is not required to give an appeal bond in an appeal of a cause of action arising under this Act.

Sec. 11. EFFECT OF PAID CLAIMS. (a) A person recovering under this Act is considered to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Each insured or claimant seeking the protection of this Act shall cooperate with the association to the same extent as that person would have been required to cooperate with the impaired insurer. The association does not have a cause of action against the insured of the impaired insurer for any sums it has paid out except those causes of action the impaired insurer would have had if the sums had been paid by the impaired insurer and except as provided in Subsection (b) of this section. In the case of an impaired insurer operating on a plan with assessment liability, payments of claims of the association do not reduce the liability of the insureds to the receiver or statutory successor for unpaid assessments.

(b) The association is entitled to recover from the following persons the amount of any covered claim paid on behalf of that person under this Act:

(1) any insured whose net worth on December 31 of the year next preceding the date the insurer becomes an impaired insurer exceeds \$50 million and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Act; and

(2) any person who is an affiliate of the impaired insurer and whose liability obligations to other persons are satisfied in whole or in part by payments made under this Act.

(c) The receiver or statutory successor of an impaired insurer is bound by settlements of covered claims by the association or a similar organization in another state. The court having jurisdiction shall grant those claims priority equal to that which the claimant would have been entitled to in the absence of this Act against the assets of the impaired insurer. The expenses of the association or similar organization in handling claims shall be accorded the same priority as the receiver's expenses.

(d) The association shall file periodically with the receiver of the impaired insurer statements of the covered claims paid by the association and estimates of anticipated claims on the association that shall preserve the rights of the association against the assets of the impaired insurer.

Sec. 12. NONDUPLICATION OF RECOVERY. (a) A person who has a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer that is also a covered claim shall exhaust first the person's rights under the policy. Any amount payable on a covered claim under this Act shall be reduced by the amount of any recovery under the insurance policy.

(b) A person who has a claim that may be recovered under more than one insurance guaranty association or its equivalent shall seek recovery first from the association of the place of residence of the insured, except that if it is a first-party claim for damage to property with a permanent location, the person shall seek recovery first from the association of the location of the property, and if it is a workers' compensation claim the person shall seek recovery first from the association of the residence of the claimant. Any recovery under this Act shall be

reduced by the amount of recovery from any other insurance guaranty association or its equivalent.

Sec. 13. PREVENTION OF INSOLVENCIES. (a) To aid in the detection and prevention of insurer insolvencies, the board of directors, on majority vote, may make recommendations to the commissioner for the detection and prevention of insurer insolvencies and respond to requests by the commissioner to discuss and make recommendations regarding the status of any member insurer whose financial condition may be hazardous to policyholders or the public. Those recommendations are not public documents and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(b) At the conclusion of any domestic insurer insolvency in which the association was obligated to pay covered claims, the board of directors may prepare a report on the history and causes of the insolvency, based on the information available to the association, and may submit the report to the commissioner.

Sec. 14. EXAMINATION OF THE ASSOCIATION. The association shall be subject to examination and regulation by the commissioner. Not later than March 30 of each year, the board of directors shall submit a financial report for the preceding calendar year in a form approved by the commissioner.

Sec. 15. TAX EXEMPTION. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions except taxes levied on real or personal property.

Sec. 16. IMMUNITY FROM LIABILITY. Any member insurer, the association or its agents or employees, the board of directors, or the commissioner or the commissioner's representatives shall not be personally liable for any act performed in good faith within the scope of his or her authority or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious.

Sec. 17. STAY OF PROCEEDINGS. All proceedings in which an impaired insurer is a party or is obligated to defend a party in any court in this state shall be stayed for six months and any additional time thereafter as may be determined by the court from the date of the designation of impairment or an ancillary proceeding is instituted in the state, whichever is later, to permit proper defense by the association of all pending causes of action. As to any covered claims arising from a judgment under any decision, verdict, or finding based on the default of the impaired insurer or its failure to defend an insured, the association either on its own behalf or on behalf of the insured may apply to have the judgment, order, decision, verdict, or finding set aside by the same court or administrator that made the judgment, order, decision, verdict, or finding and shall be permitted to defend the claim on the merits. The receiver or statutory successor of an impaired insurer covered by this Act shall permit access by the board or its authorized representative to records of the impaired insurer as are necessary for the board in carrying out its functions under this Act with regard to covered claims. In addition, the receiver or statutory successor shall provide the board or its representative with copies of the records on request of the board and at the expense of the board.

Sec. 18. ASSESSMENTS. (a) If the commissioner determines that an insurer has become an impaired insurer, the association shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver for the purpose of making payment of all covered claims. The board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need arises for each impaired insurer.

(b) If the board of directors determines that additional funds are needed in any of the three accounts, it shall advise the commissioner, who shall make assessments as necessary to produce the necessary funds. The commissioner, in determining the proportionate amount to be paid by individual insurers under an assessment, shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in this state by the insurer for those lines of business bears to the total net direct written premium collected by all insurers (except impaired insurers) in this state for those lines of business. The commissioner shall determine the total net direct written premium of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments under this subsection during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

(c) It shall be the duty of each insurer to pay the amount of an assessment under Subsection (b) of this section to the association not later than the 30th day after the commissioner gives notice of the assessment.

(d) Assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for those suits is in Travis County. Either party to the action may appeal to the appellate court having jurisdiction over the cause, the appeal shall be at once returnable to the appellate court having jurisdiction over the cause, and the action so appealed shall have precedence in the appellate court over all causes of a different character pending before the court. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising under this subsection.

(e) An insurer designated as an impaired insurer by the commissioner is exempt from assessment from and after the date of the designation and until the commissioner determines that the insurer is no longer an impaired insurer.

(f) Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of the insurer.

(g) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized under this Act. The funds in the account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. On notification by the association of the amount of any additional funds needed for the administrative account, the commissioner shall assess member insurers to obtain the needed funds in the manner set out in this section. The commissioner shall consider the net direct written premium collected in this state for all lines of business covered by this Act. An assessment for administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state may not exceed \$1,000,000 each calendar year.

Sec. 19. PURPOSE OF ASSESSMENT. (a) The amounts provided under assessments made under this Act are in addition to the marshaling of assets by the receiver under Article 21.28 of this code for the purpose of making payments on behalf of an impaired insurer.

(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before funds derived from an assessment may be used to pay covered claims.

Sec. 20. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS.

(a) On receipt from an insurer of payment of an assessment or partial assessment required by the commissioner under Section 18(b) of this Act, the association shall provide the insurer with a participation receipt, which shall create a liability against the account for the line or lines of business for which the assessment was made.

(b) The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of covered claims, the claim of the account has preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner or requested by the association. On completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of those advances to the accounts maintained by the association.

(c) If the association at any time determines that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause those excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 21 of this Act, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in the fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause the excess amount to be deposited with the state treasurer to the credit of the general revenue fund.

Sec. 21. RECOGNITION OF ASSESSMENTS IN PREMIUM TAX OFFSET. One hundred percent of any assessment paid by an insurer under this Act shall be allowed to that insurer as a credit against its premium tax under Article 4.10 of this code. The tax credit referred to in this section shall be allowed at a rate of 10 percent per year for 10 successive years following the date of assessment and, at the option of the insurer, may be taken over an additional number of years. The balance of any tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements under Article 6.12 of this code.

Sec. 22. RELEASE FROM RECEIVERSHIP. An impaired insurer placed in receivership for which advances have been made under the provisions of this Act shall not be authorized, on release from receivership, to issue new or renewal insurance policies until the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the commissioner may, on application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The commissioner may, in approving the plan, place restrictions on the issuance of new or renewal policies as the commissioner considers necessary to the implementation of the plan.

[Sec. 1. —TITLE. This article shall be known and may be cited as the "Texas Property and Casualty Insurance Guaranty Act."

[Sec. 2. —PURPOSE. This Act is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto

by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise:

[Sec. 3. SCOPE. This Act shall apply to all kinds of insurance, including workers' compensation insurance, written by stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to credit insurance that insures a lender against loss due to default by a borrower in the repayment of a loan secured by a second or junior lien mortgage, nor to insurance that insures a municipal bond holder against loss due to default of a political subdivision in the repayment of a municipal bond; nor to fidelity, surety, and guaranty bonds, nor to home warranty insurance, and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies; and shall not apply to crop insurance reinsured by the Federal Crop Insurance Corporation; to flood insurance reinsured, guaranteed or conditionally assumed by the Federal Insurance Administration; to coverages issued by risk retention groups; to financial guaranty or other forms of insurance offering protection against investment risks:

[Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation:

[Sec. 5. DEFINITIONS. As used in this Act

[(1) A. "State Board of Insurance" is the state board of insurance of this state:

[B. "Commissioner" is the Commissioner of Insurance of this State:

[(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies; issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State: "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed One Thousand Dollars (\$1,000). Individual "covered claims" shall be limited to One Hundred Thousand Dollars (\$100,000), except that the association shall pay the full amount of any "covered claim" arising out of a workers' compensation policy. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise: "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and penalties, and interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. "Covered claim" shall not include any punitive, exemplary, extracontractual, or bad faith damages awarded in a court judgment against an insured or insurer. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act. Where the impaired insurer has

insufficient assets to pay the expenses of administering the receivership or conservatorship estate; that portion of the expenses of administration incurred in the processing and payment of claims against the estate shall also be a "covered claim" under this Act.

[(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

[(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency; and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

[(5) "Payment of covered claims" is actual payment and also is utilization of funds derived from assessments for consummation of contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities for covered claims.

[(6) "Net direct written premiums" is the gross amount of premiums received from policies of insurance issued in this State to which this Act applies, less return premiums and dividends paid or credited to policyholders. The term does not include premiums for indemnity reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for indemnity reinsurance ceded to other insurers.

[(7) "Lines of business" is policies of insurance falling within one of the three following categories:

- [1. Workers' Compensation insurance;
- [2. Automobile insurance;
- [3. All other insurance to which this Act applies.

[(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[(9) "Account" means one of the four accounts created under Section 14 of this article.

[(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[(11) "Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.

[(12) "Nonmember of the association" includes mortgage guaranty insurance companies, Mexican casualty insurance companies, risk retention groups, and all persons and entities authorized to act as agents under this code including without limitation managing general agents, local recording agents, surplus lines agents, and agents subject to Article 21.07 of this code who participated in transactions involving lines of insurance within the scope of this Act.

[Sec. 6. TERMINATION OF POLICIES. This Act shall apply to covered claims existing prior to the determination that an insurer is an impaired insurer and to covered claims arising within thirty (30) days after the determination of impairment, or before the policy expiration date if less than thirty (30) days after the determination of impairment, or before the insured replaces the policy or effects its cancellation, if he does so within thirty (30) days of the determination of impairment.

[Upon the determination by the Commissioner that an insurer is an impaired insurer, the conservator or receiver appointed under Article 21.28 or Article 21.28-A of this code shall notify the insureds of the impaired insurer of the determination and of their rights under this Act. Such notification shall be by mail at each insured's address as disclosed by the books and records of the insurer but, if sufficient information for notification by mail is not available, notice by publication in a newspaper of general circulation printed in this State shall be sufficient. Such notification may be combined with notice provided under Subsection (a) of Section 3 of Article 21.28 of this code.

[Sec. 7. ASSESSMENTS. (a) Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

[(b) When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such or lines of business bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. The Commissioner shall determine the total net direct written premium of an individual insurer and for all insurers in the state from the insurers' annual statements for the year preceding the assessment. Assessments under this subsection during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

[(c) It shall be the duty of each insurer to pay the amount of an assessment under Subsection (b) of this section to the association within thirty (30) days after the Commissioner gives notice of the assessment.

[(d) Assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

[(e) Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of the designation and until the Commissioner determines that the insurer is no longer an impaired insurer.

~~[(f) Funds advanced by the association under the provisions of this Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided:~~

~~[(g) Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article, and provided further that no assessment for administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state shall exceed \$1,000,000 each calendar year.~~

~~[Sec. 7A. PURPOSE OF ASSESSMENT. (a) The amounts provided pursuant to assessments made under this article are in addition to the marshaling of assets by the receiver under Article 21.28 of this code for the purpose of making payments on behalf of an impaired insurer.~~

~~[(b) This section does not require the receiver to exhaust the assets of the impaired insurer before an assessment is made or before funds derived from an assessment may be used to pay covered claims.~~

~~[Sec. 7B. EMERGENCY CLAIMS. (a) In this section, "emergency claims" means those claims:~~

~~[(1) that would be covered claims if the insurer was declared an impaired insurer;~~

~~[(2) for which no bona fide dispute exists as to the liability of the insurer on the claim or for which payments were begun on liability accepted before the finding of insolvency;~~

~~[(3) for which a bona fide hardship exists or will exist with certain policyholders or claimants if their claims are not handled forthwith; and~~

~~[(4) for which the insurer under conservation or receivership does not have sufficient funds to pay the emergency claims.~~

~~[(b) If before a determination by the Commissioner that the insurer has become an impaired insurer, an insurer has been placed in conservation under an order of the Commissioner based on a finding of insolvency or temporary or permanent receivership under a court order based upon a finding of insolvency, the Commissioner may request from the board of directors of the association the advancement of funds to enable the conservator or receiver to have sufficient funds to pay emergency claims.~~

~~[(c) The Commissioner shall certify to the board of directors of the association a list of active claims that are emergency claims and shall certify the amount of additional funds needed to supplement the assets of the insurer to make payment of those emergency claims.~~

~~[(d) The Commissioner, in his request, shall state the reason or reasons that a bona fide hardship exists or will exist, that the insurer has not been declared an impaired insurer, and when the Commissioner reasonably anticipates that it will be declared an impaired insurer or released from conservation or receivership.~~

~~[(e) Upon receipt of the required certifications, the board of directors may advance the funds necessary to pay the additional claims.~~

~~[(f) In order to avoid undue delay in the payment of emergency claims, the conservator or receiver may contract with an insurer licensed to do business in this~~

State or any other qualified organization for the handling and adjustment of those emergency claims.

~~[(g) If an insolvent insurer is subsequently rehabilitated, any amounts advanced by the association shall be repaid to the association by the insurer or pursuant to any plan of rehabilitation. If an insolvent insurer is subsequently declared an impaired insurer, amounts advanced pursuant to this section shall be considered assessments for covered claims under Section 7 and subject to the provisions of this article.~~

~~[Sec. 8. PENALTY FOR FAILURE TO PAY ASSESSMENTS. A. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any member insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure. Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.~~

~~[B. As an alternative to the penalty provided by Subsection A of this section, the Commissioner may levy a monetary penalty on a member insurer who fails to pay an assessment when due. The monetary penalty may not exceed five percent of the unpaid assessment a month and may not be less than \$100 a month.~~

~~[Sec. 9. ACCOUNTING FOR AND REPAYMENT OF ASSESSMENTS. (a) Upon receipt from an insurer of payment of an assessment or partial assessment required by the Commissioner under Section 7(b) of this article, the association shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made.~~

~~[(b) The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.~~

~~[(c) Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.~~

~~[Sec. 10. PAYMENT OF COVERED CLAIMS. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets~~

offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

~~[In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.~~

[Sec. 11. APPROVAL OF COVERED CLAIMS. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim; and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may, in the discretion of the receiver, modify a rejection or approval of a covered claim for just cause at any time during the pendency of the receivership. The receiver may use funds received from the association to pay a particular covered claim before the receiver has processed all claims to determine which are covered claims.

~~[If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that~~

sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

[Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action; or (2) of the amount of damages to which such person is therein entitled.

[The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

[Sec. 12. ~~NONDUPLICATION OF RECOVERY.~~ Any person having a claim against an insurer under any provision in an insurance policy other than a policy of an impaired insurer, which is also a covered claim, shall be required to exhaust first his right under such policy. The amount of an approved claim under this Act shall be reduced by the policy limits of or amount paid under such insurance policy, whichever amount is greater. When a claimant exhausts his right under a policy other than a policy of an impaired insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover any amount paid the claimant under that policy.

[Any recovery under this Act shall be reduced by the amount of recovery under any other insurance guaranty act, or its equivalent, in any other state. Any person having a covered claim who is a resident of another state shall not be entitled to payment under this Act unless and until he furnishes adequate sworn proof that he

has exhausted any and all rights of recovery that he has in his state of residence and the state of residence of the insured under any insurance guaranty act or its equivalent; provided, however, that any nonresident holder of a covered claim for damage to property with a permanent location in this State shall be entitled to payment of the covered claim without first having exhausted his right of recovery in his state of residence:

[Sec. 13. —RELEASE FROM CONSERVATORSHIP OR RECEIVERSHIP. An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the Commissioner may, upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

[Sec. 14. —ADVISORY ASSOCIATION. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- [(a) the administrative account;
- [(b) the workers' compensation account;
- [(c) the automobile account; and
- [(d) the other lines of insurance account.

[(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State:

[B. —Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of nine (9) persons, five (5) of whom shall be appointed from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. The remaining members shall be representatives of the general public. Members of the board shall be appointed by the State Board of Insurance to serve overlapping three-year terms, with the terms of three of the members expiring each year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. If any director ceases to be an officer or employee of a member insurer during the term of office, that office becomes vacant until a successor is appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:

[(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

[(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

[(3) related to a person described by Subdivision (1) or (2) of this subsection within the second degree of affinity or consanguinity.

~~[(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.~~

~~[(3) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).~~

~~[C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:~~

~~[(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;~~

~~[(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;~~

~~[(3) May enter into such contracts as are necessary or proper, including the power to borrow money, to carry out the provisions and purposes of this article;~~

~~[(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;~~

~~[(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;~~

~~[(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and~~

~~[(7) May take such legal action as may be necessary to avoid the payment of improper claims.~~

~~[D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.~~

~~[(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.~~

~~[(2) All member insurers shall comply with the plan of operation.~~

~~[(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:~~

~~[(a) establish procedures for handling the assets of the association;~~

~~[(b) establish the amount and method of reimbursing members of the board of directors under this section;~~

~~[(c) establish regular places and times for meetings of the board of directors;~~

~~[(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;~~

~~[(e) establish any additional procedures for assessments under Section 7 of this article; and~~

~~[(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association:~~

~~[E. Prevention of Insolvencies and Impairments and Administration of Estates. To aid in the detection and prevention of insurer insolvencies and impairments and in the administration of receivership and conservatorship estates:~~

~~[(1) The board of directors shall notify the Commissioner of any information indicating any member, unauthorized insurer, or nonmember of the association may be unable or potentially unable to fulfill its contracts, policies, or contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. In carrying out its duties under this Act and on written request by the Commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the Commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the Commissioner has notified the board of directors or the board of directors has otherwise become aware that:~~

~~[(a) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;~~

~~[(b) insufficient funds are available from abandoned funds as provided by Section 8 of Article 21-28 of the Insurance Code; and~~

~~[(c) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting those administrative expenses.~~

~~[Funds spent by the association under this provision shall not become assets of the nonmember of the association or unauthorized insurer but are considered a special fund loaned to the receiver or the conservator for payment of administrative expenses, which loan is repayable to the extent available from the funds of the nonmember of the association or unauthorized insurer.~~

~~[(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.~~

~~[The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.]~~

~~[(3) The board of directors may make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.]~~

~~[(4) The board of directors may make recommendations to the Commissioner for the detection and prevention of member insurer impairments.]~~

~~[(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.]~~

~~[(6) Any insurer that has an officer, director, or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.]~~

~~[(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.]~~

~~[Sec. 15. RECOGNITION OF ASSESSMENTS IN PREMIUM TAX OFFSET. One hundred percent (100%) of any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 4.10 of this code. The tax credit referred to herein shall be allowed at a rate of ten percent (10%) per year for ten (10) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any tax credit not claimed in a particular year may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.]~~

~~[Sec. 16. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer of the association or its agents or employees, the association or its agents or employees, members of the board of directors, or the Commissioner or his representatives for any action taken or not taken by them in the performance of their powers and duties under this Act.]~~

~~[Sec. 17. RULES AND REGULATIONS. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.]~~

~~[Sec. 17a. ADVERTISING PROHIBITED. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.]~~

~~[Sec. 18. APPEALS. Any action or ruling of the Commissioner under this Act may be appealed as provided in Article 1.04 of the Insurance Code. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.]~~

~~[Sec. 19. CERTAIN EVIDENCE NOT ADMISSIBLE; UNFAIR PRACTICES. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.]~~

~~[(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance Code, as amended, and shall be subject to the provisions thereof.]~~

~~[Sec. 20. CONTROL OVER CONFLICTS. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and other law relating to the subject matter of this Act or its application, the provisions of this Act shall control, except Articles 21.28 and 21.28-A of this code always prevail over the provisions of this Act.]~~

~~[Sec. 21. UNCONSTITUTIONAL APPLICATION PROHIBITED. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.]~~

~~[Sec. 22. SEVERANCE CLAUSE. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.]~~

SECTION 1.21. Article 21.28-D, Insurance Code, is amended to read as follows:

Art. 21.28-D. LIFE, ACCIDENT, HEALTH, AND HOSPITAL SERVICE INSURANCE GUARANTY ASSOCIATION

Sec. 1. SHORT TITLE. This Act shall be known and may be cited as the Life, Accident, Health, and Hospital Service Insurance Guaranty Association Act.

Sec. 2. PURPOSE. The purpose of this Act is to protect, subject to certain limitations, the persons specified in Section 3(a) of this Act against failure in the performance of contractual obligations, under life and health insurance policies and annuity contracts specified in Section 3(b) of this Act, because of the impairment or insolvency of the member insurer that issued the policies or contracts. To provide this protection, an association of insurers is created to pay benefits and to continue coverages as limited herein, and members of the association are subject to assessment to provide funds to carry out the purpose of this Act.

Sec. 3. COVERAGE AND LIMITATIONS. (a) This Act provides coverage for a policy or contract specified in Subsection (b) of this section to:

(1) a person, other than a nonresident certificate holder under a group policy or contract, who is the beneficiary, assignee, or payee of a person covered under Paragraph (2) of this subsection; and

(2) a person who is an owner of or certificate holder under the policy or contract; or, in the case of an unallocated annuity contract, to the person who is the contract holder, and who:

(A) is a resident; or

(B) is not a resident, but only if:

(i) the insurers that issued the policies or contracts are domiciled in this state;

(ii) the insurers never held a license or certificate of authority in the states in which the persons reside;

(iii) the states have associations similar to the association created by this Act; and

(iv) the person is not eligible for coverage by the associations.

(b) This Act provides coverage to the persons specified in Subsection (a) of this section for direct, non-group life, health, accident, annuity, and supplemental policies or contracts, for certificates under direct group policies and contracts, group hospital service contracts, and for unallocated annuity contracts issued by member insurers, except as limited by this Act. This Act also provides coverage for all other insurance coverages written by mutual assessment corporations, local mutual aid associations, statewide mutual assessment companies, and stipulated premium companies licensed to do business in this state. Annuity contracts and certificates under group annuity contracts include guaranteed investment contracts, deposit administration contracts, unallocated funding agreements, allocated funding agreements, structured settlement agreements, lottery contracts, and any immediate or deferred annuity contracts.

(c) This Act does not provide coverage for:

(1) a portion of a policy or contract not guaranteed by the insurer, or under which the risk is borne by the policy or contract holder;

(2) a policy or contract of reinsurance, unless assumption certificates have been issued;

(3) a portion of a policy or contract to the extent that the rate of interest on which it is based:

(A) averaged over the period of four years before the date on which the association becomes obligated with respect to the policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for a lesser period if the policy or contract was issued less than four years before the association became obligated; and

(B) on and after the date on which the association becomes obligated with respect to the policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;

(4) a plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that the plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:

(A) a multiple employer welfare arrangement as defined by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1002);

(B) a minimum premium group insurance plan;

(C) a stop-loss group insurance plan; or

(D) an administrative services-only contract;

(5) a portion of a policy or contract, to the extent that it provides dividends or experience rating credits, or provides that fees or allowances be paid

to any person, including the policy or contract holder, in connection with the service to or administration of the policy or contract;

(6) a policy or contract issued in this state by a member insurer at a time when it was not licensed to issue the policy or contract in this state;

(7) an unallocated annuity contract issued to an employee benefit plan protected under the federal Pension Benefit Guaranty Corporation; and

(8) a portion of an unallocated annuity contract that is not issued to or in connection with a specific employee, benefit plan for a union or association of natural persons, or a government lottery.

(d) The benefits for which the association may become liable may not exceed the contractual obligations for which the insurer is liable or would have been liable if it were not an impaired or insolvent insurer.

Sec. 4. CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 of this Act. Section 2 of this Act shall be used as an aid and guide to interpretation.

Sec. 5. DEFINITIONS. As used in this Act:

(1) "Account" means the four accounts created under Section 6 of this Act.

(2) "Association" means the Life, Accident, Health, and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

(3) "Contractual obligation" means an obligation under a policy or contract or certificate under a group policy or contract, or portion thereof for which coverage is provided under Section 3 of this Act. A contractual obligation does not include:

(A) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 in the aggregate under one or more covered policies on any one life;

(B) an amount in excess of \$100,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of \$5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

(C) an amount in excess of \$200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life; or

(D) punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured or imposed by a court of competent jurisdiction.

(4) "Covered policy" means any policy or contract within the scope of this Act under Section 3 of this Act.

(5) "Impaired insurer" means:

(A) A member insurer that is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28 or 21.28-A, Insurance Code, and that has been designated an "impaired insurer" by the commissioner; or

(B) A member insurer determined in good faith by the commissioner to be unable or potentially unable to fulfill its contractual obligations.

(6) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes impaired to the extent prohibited by law and that has been designated an "insolvent insurer" by the commissioner.

(7) "Member insurer" means any insurer licensed or that holds a certificate of authority to transact in this state any kind of insurance for which

coverage is provided under Section 3 of this Act, and includes any insurer whose license or certificate of authority in this state may have been suspended, revoked, not renewed, or voluntarily withdrawn, including a mutual assessment corporation, a local mutual association, a statewide mutual assessment company, and a stipulated premium company licensed to do business in this state, but does not include:

- (A) a health maintenance organization;
- (B) a fraternal benefit society;
- (C) a mandatory state pooling plan;
- (D) an insurance exchange; or
- (E) any entity similar to any of those described by

Paragraphs (A)-(D) of this subdivision.

(8) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor to that entity.

(9) "Person" means any individual, corporation, partnership, association, or voluntary organization.

(10) "Premiums" means amounts received on covered policies or contracts less premiums, considerations, and deposits returned on those policies or contracts, and less dividends and experience credits on those policies or contracts. "Premiums" does not include amounts received for policies or contracts or for the portions of any policies or contracts for which coverage is not provided under Section 3(b) of this Act, except that assessable premiums shall not be reduced on account of Section 3(c)(3) of this Act relating to interest limitations and Section 5(3) of this Act relating to limitations with respect to any one individual, any one participant, any one annuitant, and any one contract holder. "Premiums" does not include premiums in excess of five million dollars on any unallocated annuity contract not issued under a governmental retirement plan established under Section 401, 403(b), or 457 of the United States Internal Revenue Code (26 U.S.C. Sections 401, 403(b) and 457). "Premiums" also does not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act.

(11) "Resident" means any person who resides in this state at the time a member insurer is determined to be an impaired or insolvent insurer and to whom a contractual obligation is owed. A person may be a resident of only one state, which in the case of a person other than a natural person is its principal place of business.

(12) "Supplemental contract" means any agreement entered into for the distribution of policy or contract proceeds.

(13) "Unallocated annuity contract" means any annuity contract or group annuity certificate that is not issued to and owned by an individual, except to the extent of any annuity benefits guaranteed to an individual by an insurer under the contract or certificate.

Sec. 6. CREATION OF THE ASSOCIATION. (a) The Life, Accident, Health, and Hospital Service Insurance Guaranty Association is a nonprofit legal entity. All member insurers shall be and remain members of the association as a condition of their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 of this Act and shall exercise its powers through a board of directors established under Section 7 of this Act. For purposes of administration and assessment, the association shall maintain four accounts:

- (1) the accident, health, and hospital services account;
- (2) the life insurance account;
- (3) the annuity account; and
- (4) the administrative account.”

(b) The association is under the immediate supervision of the commissioner and is subject to the applicable provisions of this code and any other law governing insurance in this state.

Sec. 7. BOARD OF DIRECTORS. (a) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three of whom shall be chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, two of whom shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location, and four of whom shall be representatives of the general public. Members serve for six-year staggered terms, with the terms of three members expiring each odd-numbered year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until his successor shall have been appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:

(1) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

(2) a person required to register with the secretary of state under Chapter 305, Government Code; or

(3) related to a person described by Subparagraph (1) or (2) of this paragraph within the second degree of affinity or consanguinity.

(b) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

(c) Members of the board may be reimbursed from the assets of the association for expenses incurred by them as members of the board of directors but members of the board may not otherwise be compensated by the association for their services.

Sec. 8. POWERS AND DUTIES OF THE ASSOCIATION. (a) If a member insurer is an impaired domestic insurer, the association may, in its discretion, and subject to any conditions imposed by the association that do not impair the contractual obligations of the impaired insurer, that are approved by the commissioner, and that are, except in cases of court-ordered conservation or rehabilitation, also approved by the impaired insurer:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, any or all of the policies or contracts of the impaired insurer;

(2) provide the moneys, pledges, notes, guarantees, or other means as are proper to effectuate Subdivision (1) of this subsection and assure payment of the contractual obligations of the impaired insurer pending action under Subdivision (1) of this subsection; or

(3) loan money to the impaired insurer.

(b) If a member insurer is an impaired insurer, whether domestic, foreign or alien, and the insurer is not paying claims timely, subject to the conditions specified in Subsection (c) of this section, the association shall:

(1) take any of the actions specified in Subsection (a) of this section, subject to the conditions in that subsection; or

(2) provide substitute benefits in lieu of the contractual obligations of the impaired insurer solely for health claims, periodic annuity benefit payments, death benefits, supplemental benefits, and cash withdrawals for policy or contract owners who petition for substitute benefits under claims of emergency or hardship under standards proposed by the association and approved by the commissioner.

(c) The association is subject to Subsection (b) of this section only if:

(1) the laws of the impaired insurer's state of domicile provided that, until all payments of or on account of the impaired insurer's contractual obligations by all guaranty associations, along with all expenses of the associations and interest on all those payments and expenses have been repaid to the guaranty associations or a plan of repayment by the impaired insurer has been approved by the guaranty associations:

(A) the delinquency proceeding may not be dismissed;

(B) the impaired insurer and its assets may not be returned to the control of its shareholders or private management; and

(C) the impaired insurer may not solicit or accept new business or have any suspended or revoked license restored; and

(2) the impaired insurer is a domestic insurer, and has been placed under an order of rehabilitation by a court of competent jurisdiction in this state; or

(3) the impaired insurer is a foreign or alien insurer and:

(A) it has been prohibited from soliciting or accepting new business in this state;

(B) its certificate of authority has been suspended or revoked in this state; and

(C) a petition for rehabilitation or liquidation has been filed in a court of competent jurisdiction in its state of domicile by the commissioner of the state.

(d) Except as provided by Subsection (e) of this section, if a member insurer is an insolvent insurer, the association shall provide the moneys, pledges, guarantees, or other means as are reasonably necessary to discharge the duties of the insolvent insurer and:

(1) guarantee, assume, or reinsure, or cause to be guaranteed, assumed, or reinsured, the policies or contracts of the insolvent insurer; or

(2) assure payment of the contractual obligations of the insolvent insurer.

(e) When proceeding under Subsections (b)(2) or (d) of this section, with respect to only life and health insurance policies the association shall:

(1) assure payment of benefits for premiums identical to the premiums and benefits, except for terms of conversion and renewability that would have been payable under the policies of the insolvent insurer, for claims incurred:

(A) with respect to a group policy or contract, the later of:

(i) the earlier of the next renewal date under the policy or contract or the 45th day after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy; or

(B) with respect to an individual policy, the later of:

(i) the earlier of the next renewal date under the policy, if any, or the date one year after the date the association becomes obligated with respect to the policy; or

(ii) the 30th day after the date the association becomes obligated with respect to the policy;

(2) make diligent efforts to provide all known insureds or group policyholders notice before the 30th day before the benefits provided are terminated; and

(3) with respect to individual policies, make available to each known insured, or owner if other than the insured, and with respect to an individual formerly insured under a group policy who is not eligible for replacement group coverage, substitute coverage on an individual basis in accordance with the provisions of Subsection (f) of this section, if the insureds had a right under law or the terminated policy to convert coverage to individual coverage or to continue an individual policy in force until a specified age or for a specified time, during which the insurer had no right unilaterally to make changes in any provision of the policy or had a right only to make changes in premium by class.

(f) In providing the substitute coverage required under Subsection (e)(3) of this section, the association may offer either to reissue the terminated coverage or to issue an alternative policy. Alternative or reissued policies shall be offered without requiring evidence of insurability, and may not provide for any waiting period or exclusion that would not have applied under the terminated policy. The association may reinsure any alternative or reissued policy.

(g) An alternative policy adopted by the association is subject to the approval of the commissioner. The association may adopt alternative policies of various types for future issuance without regard to any particular impairment or insolvency.

(h) An alternative policy issued by the association must contain at least the minimum statutory provisions required in this state and provide benefits that are not unreasonable in relation to the premium charged. The association shall set the premium in accordance with a table of rates adopted by the association. The premium shall reflect the amount of insurance to be provided and the age and class of risk of each insured, but may not reflect any changes in the health of the insured after the original policy was last underwritten.

(i) An alternative policy issued by the association must provide coverage of a type similar to that of the policy issued by the impaired or insolvent insurer, as determined by the association.

(j) If the association elects to reissue terminated coverage at a premium rate different from that charged under the terminated policy, the premium shall be set by the association in accordance with the amount of insurance provided and the age and class of risk, subject to approval of the commissioner or by a court of competent jurisdiction.

(k) The association's obligations with respect to coverage under any policy of the impaired or insolvent insurer or under any reissued or alternative policy cease on the date the coverage or policy is replaced by another similar policy by the policyholder, the insured, or the association.

(l) When proceeding under Subsection (b)(2) or (d) of this section with respect to a policy or contract carrying guaranteed minimum interest rates, the association shall assure the payment or crediting of a rate of interest consistent with Section 3(c)(3) of this Act.

(m) Nonpayment of premiums within 31 days after the date required under the terms of any guaranteed, assumed, alternative, or reissued policy or contract or substitute coverage terminates the association's obligations under the policy or coverage under this Act with respect to that policy or coverage, except with respect to any claims incurred or any net cash surrender value due in accordance with the provisions of this Act.

(n) Premiums due for coverage after entry of an order of liquidation of an insolvent insurer belong to and are payable at the direction of the association, and the association is liable for unearned premiums due to policy or contract owners arising after the entry of the order.

(o) The protection provided by this Act does not apply where any guaranty protection is provided to residents of this state by the laws of the domiciliary state or jurisdiction of the impaired or insolvent insurer other than this state.

(p) In carrying out its duties under this section, the association may, subject to approval by the court:

(1) impose permanent policy or contract liens in connection with any guarantee, assumption, or reinsurance agreement if the association finds that the amounts that can be assessed under this Act are less than the amounts needed to assure full and prompt performance of the association's duties under this Act, or that the economic or financial conditions as they affect member insurers are sufficiently adverse to make the imposition of the permanent policy or contract liens in the public interest; or

(2) impose temporary moratoriums or liens on payments of cash values and policy loans, or any other right to withdraw funds held in conjunction with policies or contracts, in addition to any contractual provisions for deferral of cash or policy loan value.

(q) If the association fails to act within a reasonable period of time as provided in Subsections (b)(2), (d), and (e) of this section, the commissioner may assume the powers and duties of the association under this Act with respect to impaired or insolvent insurers.

(r) The association may render assistance and advice to the commissioner, on request, concerning rehabilitation, payment of claims, continuance of coverage, or the performance of other contractual obligations of an impaired or insolvent insurer.

(s) The association may appear before any court in this state with jurisdiction over an impaired or insolvent insurer concerning which the association is or may become obligated under this Act. This right extends to all matters germane to the powers and duties of the association, including proposals for reinsuring, modifying, or guaranteeing the policies or contracts of the impaired or insolvent insurer and the determination of the policies or contracts and contractual obligations. The association may appear or intervene before a court in another state with jurisdiction over an impaired or insolvent insurer for which the association is or may become obligated or with jurisdiction over a third party against whom the association may have rights through subrogation of the insurer's policyholders.

(t) A person receiving benefits under this Act shall be deemed to have assigned the rights under, and any causes of action relating to, the covered policy or contract to the association to the extent of the benefits received under this Act, whether the benefits are payments of or on account of contractual obligations, continuation of coverage, or provision of substitute or alternative coverages. The association may require an assignment to it of the rights and cause of action by any payee, policy or contract owner, beneficiary, insured, or annuitant as a condition to the receipt of a right or benefit under this Act. The subrogation rights of the association under this subsection shall have the same priority against the assets of the impaired or insolvent insurer as that possessed by the person entitled to receive benefits under this Act.

(u) The association has all common-law rights of subrogation and any other equitable or legal remedy that would have been available to the impaired or insolvent insurer or holder of a policy or contract with respect to such a policy or contract.

(v) The association may:

(1) enter into contracts as are necessary or proper to carry out the provisions and purposes of this Act;

(2) sue or be sued, including taking any legal actions necessary or proper to recover any unpaid assessments under Section 9 of this Act and to settle claims or potential claims against it;

(3) borrow money to effect the purposes of this Act, and any notes or other evidence of indebtedness of the association not in default are legal investments for domestic insurers and may be carried as admitted assets;

(4) employ or retain employees or contractors to handle the financial transactions of the association and to perform other functions under this Act;

(5) take legal action as may be necessary to avoid payment of improper claims; and

(6) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life, accident, health, or hospital service insurer, but the association may not issue insurance policies or annuity contracts other than those issued to perform its obligations under this Act.

(w) The association may join an organization of one or more other state associations of similar purposes to further the purposes and administer the powers and duties of the association.

Sec. 9. ASSESSMENTS. (a) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the association shall assess the member insurers, separately for each account established by Section 6(a) of this Act, at such times and for such amounts as the board of directors finds necessary. All assessments are due on a date specified by the association that may not be earlier than the 30th day after the date on which prior written notice is given to the member insurers. Interest accrues on the unpaid amount at a rate of 10 percent beginning on the due date.

(b) There are two classes of assessments, as follows:

(1) Class A assessments are made to meet administrative costs of the association, administrative expenses properly incurred under this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer; and

(2) Class B assessments are made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

(c) The amount of a Class A assessment for each account is determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force, as reflected in the annual statements for the year preceding the assessment.

(d) The amount of a Class B assessment shall be divided among the separate accounts as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by the insolvent or impaired insurer from all covered policies during the year preceding impairment.

(e) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code.

(f) Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bear to the premiums received on all business by all assessed member insurers.

(g) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer may not be made until necessary to implement the purposes of this Act. Classification of assessments under Subsection (b) of this section and computation of assessments under this subsection shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

(h) The association may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the association, payment of the assessment

would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments on a member insurer for each account may not exceed one percent of the insurer's premiums on the policies covered by the account in any one calendar year.

(i) If an assessment against a member insurer is abated or deferred under Subsection (h) of this section, in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this subsection. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

(j) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

(k) The association shall issue to each insurer paying a Class B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

(l) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is canceled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

(m) The amounts provided pursuant to assessments made under this section are supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

(n) All assessments collected by the association may be deposited into the Texas Treasury Safekeeping Trust Company in accordance with procedures established by the state treasurer. The funds deposited shall be accounted for separately from all other funds by the state treasurer to the association.

Sec. 10. PLAN OF OPERATION. (a) The association operates under a plan of operation approved by the commissioner. The association may amend the plan, subject to the approval of the commissioner. An amendment to the plan becomes effective on the date on which the commissioner approves the amendment, or on the 30th day after the date the amendment is submitted to the commissioner for approval, if the commissioner does not approve or disapprove the amendment before that date.

(b) All member insurers shall comply with the plan of operation.

(c) The plan of operation must, in addition to requirements of this Act:

(1) establish procedures for handling the assets of the association;
(2) establish the amount and method of reimbursing members of the board of directors under Section 7 of this Act;

(3) establish regular places and times for meetings, including telephone conference calls, of the board of directors;

(4) establish procedures for records to be kept of all financial transactions of the association, its agents, and the board of directors;

(5) establish any additional procedures for assessments under Section 9 of this Act; and

(6) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

(d) The plan of operation may provide that any or all powers and duties of the association, except those under Sections 8(u) and 9 of this Act, are delegated to a corporation, association, or other organization that performs functions similar to those of this association, or its equivalent, in two or more states. The corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this subsection may take effect only with the approval of both the board of directors and the commissioner, and may be made only to a corporation, association, or organization that extends protection not substantially less favorable and effective than that provided by this Act.

Sec. 11. DUTIES AND POWERS OF THE COMMISSIONER. (a) In addition to the duties and powers enumerated elsewhere in this Act, the commissioner shall provide the association, on request, with a statement of the premiums in this and any other appropriate states for each member insurer.

(b) When an impairment is declared and the amount of the impairment is determined, the commissioner shall serve a demand upon the impaired insurer to make good the impairment within a reasonable time. Notice to the impaired insurer constitutes notice to its shareholders, if any. The failure of the insurer to promptly comply with the demand does not excuse the association from the performance of its powers and duties under this Act.

(c) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer that fails to pay an assessment when due or fails to comply with the plan of operation. As an alternative, the commissioner may levy a forfeiture on any member insurer that fails to pay an assessment when due. The forfeiture may not exceed five percent of the unpaid assessment per month and may not be less than \$100 per month.

(d) An action of the board of directors or the association may be appealed to the commissioner by a member insurer if the appeal is taken before the 61st day after the final action being appealed. If a member company is appealing an assessment, the amount assessed shall be paid to the association and available to meet association obligations during the pendency of an appeal. If the appeal on the assessment is upheld, the amount paid in error or excess shall be returned to the member company.

(e) The commissioner, as receiver of an impaired insurer, may notify all interested persons of the effect of this Act.

Sec. 12. PREVENTION OF INSOLVENCIES. (a) The commissioner shall:

(1) notify the commissioners of all the other states, territories of the United States, and the District of Columbia by mail not later than the 30th day after the commissioner takes any of the following actions against a member insurer:

(A) revokes a license;

(B) suspends a license; or

(C) makes any formal order that the insurer restrict its premium writing, obtain additional contributions to surplus, withdraw from the state, reinsure all or any part of its business, or increase capital, surplus, or any other account for the security of policyholders or creditors;

(2) report to the board of directors when the commissioner has taken any of the actions set forth in Subdivision (1) of this subsection or has received a report from any other commissioner indicating that a similar action has been taken in another state. The report to the board of directors must contain all significant details of the action taken or the report received from the other commissioner;

(3) report to the board of directors when the commissioner has reasonable cause to believe from any examination, whether completed or in process,

of any member insurer that the insurer may be an impaired or insolvent insurer; and

(4) furnish to the board of directors the National Association of Insurance Commissioners Insurance Regulatory Information System ratios and listings of companies not included in the ratios developed by the National Association of Insurance Commissioners.

(b) The board may use the information described by Subsection (a) of this section in carrying out its duties and responsibilities under this Act. The board shall keep the report and the information contained in the report confidential until it is made public by the commissioner or other lawful authority.

(c) The commissioner may seek the advice and recommendations of the board of directors concerning any matter affecting the commissioner's duties and responsibilities regarding the financial condition of member insurers and companies seeking admission to transact insurance business in this state.

(d) The board of directors may, on majority vote, make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer or germane to the solvency of any company seeking to do an insurance business in this state. These reports and recommendations are not public documents and are not subject to the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

(e) The board of directors shall, on majority vote, notify the commissioner of information indicating a member insurer may be an impaired or insolvent insurer.

(f) The board of directors may, on majority vote, request that the commissioner order an examination of any member insurer that the board in good faith believes may be an impaired or insolvent insurer. Not later than the 30th day after the receipt of the request, the commissioner shall begin the examination. The examination may be conducted as a National Association of Insurance Commissioners examination or may be conducted by persons designated by the commissioner. The cost of the examination shall be paid by the association and the examination report shall be treated as are other examination reports. In no event shall the examination report be released to the board of directors before its release to the public, but this does not preclude the commissioner from complying with Subsection (a) of this section. The commissioner shall notify the board of directors when the examination is completed. The request for an examination shall be kept on file by the commissioner but it is open to public inspection before the release of the examination report to the public.

(g) The board of directors may, on majority vote, make recommendations to the commissioner for the detection and prevention of insurer insolvencies.

(h) The board of directors shall, at the conclusion of any insurer insolvency in which the association was obligated to pay covered claims, prepare a report to the commissioner containing any information as it has in its possession bearing on the history and causes of the insolvency. The board shall cooperate with the boards of directors of guaranty associations in other states in preparing a report on the history and causes of insolvency of a particular insurer, and may adopt by reference any report prepared by the other associations.

Sec. 13. CREDITS FOR ASSESSMENTS PAID. (a) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner under Section 9(k) of this Act at percentages of the original face amount approved by the commissioner, for calendar years as follows:

100 percent for the calendar year of issuance, which shall be reduced 10 percent a year for each year thereafter for a period of 10 years.

(b) The insurer may offset the amount written off by it in a calendar year under Subsection (a) of this section against its premium tax liability to this state accrued with respect to business transacted in that year. An insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within the year.

(c) Any sums acquired by refund, pursuant to Section 9(j) of this Act, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Subsection (b) of this section, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.

Sec. 14. MISCELLANEOUS PROVISIONS. (a) This Act does not reduce the liability for unpaid assessments of the insureds of an impaired or insolvent insurer operating under a plan with assessment liability.

(b) The association shall maintain records of all negotiations and meetings in which the association or its representatives discuss the activities of the association in carrying out its powers and duties under Section 8 of this Act. Records of the negotiations or meetings may be made public only on the termination of a liquidation, rehabilitation, or conservation proceeding involving the impaired or insolvent insurer, on the termination of the impairment or insolvency of the insurer, or on the order of a court of competent jurisdiction. This subsection does not limit the duty of the association to report on its activities under Section 15 of this Act.

(c) To carry out its obligations under this Act, the association shall be deemed to be a creditor of the impaired or insolvent insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee under Sections 8(t) and (u) of this Act. Assets of the impaired or insolvent insurer attributable to covered policies shall be used to continue all covered policies and pay all contractual obligations of the impaired or insolvent insurer as required by this Act. Assets attributable to covered policies, as used in this subsection, are that proportion of the assets that the reserves that should have been established for the policies bear to the reserves that should have been established for all policies of insurance written by the impaired or insolvent insurer.

(d) Before the termination of any liquidation, rehabilitation, or conservation proceeding, the court may take into consideration the contributions of the respective parties, including the association, the shareholders, and policyholders of the insolvent insurer, and any other party with a bona fide interest, in making an equitable distribution of the ownership rights of the insolvent insurer. In making this determination, the court shall consider the welfare of the policyholders of the continuing or successor insurer.

(e) A distribution to stockholders of an impaired or insolvent insurer may not be made until the total amount of valid claims of the association for funds expended in carrying out its powers and duties under Section 8 of this Act with respect to the insurer have been recovered with interest by the association.

(f) If an order for liquidation or rehabilitation of an insurer domiciled in this state has been entered, the receiver appointed under the order may recover on behalf of the insurer, from any affiliate that controlled it, the amount of distributions, other than stock dividends paid by the insurer on its capital stock, made at any time during the five years preceding the petition for liquidation or rehabilitation subject to the limitations of Subsections (g), (h), and (i) of this section.

(g) A distribution to stockholders is not recoverable under Subsection (f) of this section if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations.

(h) A person that was an affiliate that controlled the insurer at the time distributions subject to Subsection (f) of this section were paid is liable for the amount of distributions received. A person that was an affiliate that controlled the insurer at the time the distributions were declared is liable for the amount of distributions the person would have received if they had been paid immediately. If two or more persons are liable with respect to the same distributions, they are jointly and severally liable.

(i) The maximum amount recoverable under Subsections (f) and (h) of this section is the amount needed in excess of all other available assets of the insolvent insurer to pay the contractual obligations of the insolvent insurer.

(j) If a person liable under Subsection (h) of this section is insolvent, all its affiliates that controlled it at the time the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate.

(k) An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article, or for which guaranty fees have been provided, may not, on release from conservatorship or receivership, issue new or renewal insurance policies until the insurer has repaid in full the amount of guaranty fees furnished by the association. The commissioner may, on application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operation by the released insurer for repayment. The commissioner may, in approving such plan, place restrictions on the issuance of new or renewal policies as necessary to the implementation of the plan. The commissioner shall give 10 days' notice of a hearing under this subsection to the association, and the association and member insurers that paid assessments in relation to the impaired insurer are entitled to appear at and participate in the hearing. Money recovered by the association under this subsection shall be repaid to the member insurers that paid assessments in relation to the impaired insurer on return of the appropriate certificate of contribution.

Sec. 15. EXAMINATION OF THE ASSOCIATION; ANNUAL REPORT. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner each year, not later than the 120th day after the last day of the association's fiscal year, a financial report in a form approved by the commissioner and a report of the association's activities during the preceding fiscal year.

Sec. 16. TAX EXEMPTIONS. The association is exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real or personal property.

Sec. 17. IMMUNITY FROM LIABILITY. Any member insurer, the association, or its agents or employees, the board of directors, or the commissioner or the commissioner's representatives shall not be personally liable for any act performed in good faith within the scope of his or her authority or for damages occasioned by his or her official acts or omissions except for an act or omission that is corrupt or malicious.

Sec. 18. STAY OF PROCEEDINGS; REOPENING DEFAULT JUDGMENTS. All proceedings in which the insolvent insurer is a party in any court in this state shall be stayed until the 60th day after the date an order of liquidation, rehabilitation, or conservation is final to permit proper legal action by the association on any matters germane to its powers or duties. The association may apply to have any decision, order, verdict, or finding based on default set aside by the same court that made the default judgment and may defend against the suit on the merits.

Sec. 19. PROHIBITED ADVERTISEMENT OF INSURANCE GUARANTY ASSOCIATION ACT IN INSURANCE SALES; NOTICE TO

POLICYHOLDERS. (a) A person may not make, publish, disseminate, circulate, or place before the public or cause, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in any newspaper, magazine or other publication, or in the form of a notice, circular, pamphlet, letter, or poster, or over any radio station or television station, or in any other way, any advertisement, announcement, or statement, written or oral, that uses the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance covered by this Act. This section does not apply to the association or any other entity which does not sell or solicit insurance. "The use of the protection afforded by this Act, other than as provided by this section, by any person in the sale of insurance constitutes unfair competition and unfair practices under Article 21.21 of this code, and is subject to the sanctions imposed under that article."

(b) The association shall prepare a summary document describing the general purposes and current limitations of the Act and complying with Subsection (c) of this section. This document shall be submitted to the commissioner for approval. Unless Subsection (d) of this section applies, at the expiration of the 60th day after the date on which the commissioner approves the document, an insurer may not deliver a policy or contract described in Section 3 of this Act to a policy or contract holder unless the summary document is delivered to the policy or contract holder before or at the time of delivery of the policy or contract. The document shall be available on request by a policyholder. The distribution, delivery, or contents or interpretation of this document does not guarantee that the policy or the contract or the holder of the contract or policy is covered in the event of the impairment or insolvency of a member insurer. The document shall be revised by the association as amendments to the Act may require. Failure to receive this document does not give the policyholder, contract holder, certificate holder, or insured any greater rights than those stated in this Act.

(c) The document prepared under Subsection (b) of this section must contain a clear and conspicuous disclaimer on its face. The commissioner shall promulgate a rule establishing the form and content of the disclaimer. The disclaimer shall:

(1) state the name and address of the association and insurance department;

(2) warn the policy or contract holder that the association may not cover the policy or, if coverage is available, it will be subject to substantial limitations and exclusions and conditioned on continued residence in the state;

(3) state that the insurer and its agents are prohibited by law from using the existence of the association for the purpose of sales, solicitation, or inducement to purchase any form of insurance;

(4) state that the policy or contract holder should not rely on coverage under the association when selecting an insurer; and

(5) provide other information as directed by the commissioner.

(d) An insurer or agent may not deliver a policy or contract described in Section 3(b) of this Act and excluded under Section 3(c) of this Act from coverage under this Act unless the insurer or agent, before or at the time of delivery, gives the policy or contract holder a separate written notice that clearly and conspicuously discloses that the policy or contract is not covered by the association. The commissioner shall by rule specify the form and content of the notice.

Sec. 20. SUITS AGAINST ASSOCIATION. (a) Venue in a suit against the association arising under this article is in Travis County.

(b) The association is not required to give an appeal bond in an appeal of a cause of action under this article.

[Sec. 2. PURPOSE. The purpose of this Act is to protect policyowners; insureds; beneficiaries; annuitants; payees; and assignees of life insurance policies;

accident insurance policies, health insurance policies, annuity contracts, and supplemental contracts, and the holders of group hospital service contracts, subject to certain limitations, against failure in the performance of contractual obligation due to the impairment of the insurer issuing such policies or contracts. To provide this protection, (1) an association of insurers is created to enable the guaranty of payment of benefits and of continuation of coverages, (2) members of the association are subject to assessment to provide funds to carry out the purpose of this Act, and (3) the association is authorized to proceed in the prescribed manner, in the detection and prevention of insurer impairments.

[Sec. 3. SCOPE. (1) This Act shall apply:

(a) to direct life insurance policies, accident insurance policies, health insurance policies, annuity contracts including unallocated annuity contracts except those specifically excluded in this Act, and contracts supplemental to life, accident or health insurance policies, group hospital service contracts and annuity contracts issued by any domestic member insurer and all such policies and contracts issued by a foreign or alien member insurer and all of those insurance policies and annuity contracts and all other insurance coverages written by mutual assessment corporations, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, and stipulated premium insurance companies licensed to do business in this state; and

(b) with respect to such policies and contracts:

(i) to those persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under Paragraph (ii) or (iii); and

(ii) to those persons who are owners of or certificate holders under those policies or contracts and who are residents of this state at the time such insurer becomes an impaired insurer as defined in this Act; or

(iii) to those persons who are not residents of this state at that time but who meet all of the following conditions:

(A) the policies or contracts are issued by insurers domiciled in this state;

(B) at the time the policies or contracts were issued, the persons were residents of this state;

(C) the insurers did not hold a license or certificate of authority in the states in which the persons reside at the time a delinquency proceeding as defined by Article 21.28 of this code is commenced against those insurers;

(D) the other states have associations similar to the association created by this Act; and

(E) the persons are not eligible for coverage by those associations in the other state:

(2) This Act shall not apply to:

(a) Any such policies or contracts, or any part of such policies or contracts, under which the risk is borne by the policyholder;

(b) Any kind of reinsurance contract or agreement between insurers, the terms of which do not create a direct liability of the assuming insurer; or the terms of which do not require the creation of a direct liability to the policyholder through issuance of an assumption certificate, or other written instrument;

(c) Any kind of insurance or annuities, the benefits of which are exclusively payable or determined by a separate account required by the terms of such insurance policy to be maintained by the insurer or by a separate entity;

~~[(d) Any such policies or contracts issued by a foreign or alien insurer on nonresidents of this state at the time such insurer becomes an impaired insurer as defined in this Act;~~

~~[(e) Any such policy or contracts of a foreign or alien insurer whose domiciliary jurisdiction or state of entry provides by statutes or regulations for residents of this state protection substantially similar to that provided by this Act for residents of other states;~~

~~[(f) Any such policies or contracts issued by fraternal benefit societies and assessment-as-needed companies, nor to such policies or contracts issued by insurers subject to the provisions of Chapter 360, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.28-C, Vernon's Texas Insurance Code);~~

~~[(g) Subject to Section 12 of this Act pertaining to the payment of expenses of administration, any plan or program of an employer, association, or similar entity to provide life, health, or annuity benefits to its employees or members to the extent that such plan or program is self-funded or uninsured, including but not limited to benefits payable by an employer, association, or similar entity under:~~

~~[(i) a multiple employer welfare arrangement as defined by Section 514 of the Employee Retirement Income Security Act of 1974;~~

~~[(ii) a minimum premium group insurance plan;~~

~~[(iii) a stop-loss group insurance plan; or~~

~~[(iv) an administrative services only contract;~~

~~[(h) Any policy or contract issued in this state by a member, nonmember, or unauthorized insurer when the insurer was not licensed or did not have a certificate of authority to do insurance business in this state subject to Section 12 of this Act pertaining to the payment of expenses of administration;~~

~~[(i) Any portion of a policy or contract to the extent that the rate of interest on which it is based:~~

~~[(i) averaged over the period of four years prior to the date on which the association becomes obligated with respect to such policy or contract, exceeds a rate of interest determined by subtracting two percentage points from Moody's Corporate Bond Yield Average averaged for that same four-year period or for such lesser period if the policy or contract was issued less than four years before the association became obligated; and~~

~~[(ii) on and after the date on which the association becomes obligated with respect to such policy or contract, exceeds the rate of interest determined by subtracting three percentage points from Moody's Corporate Bond Yield Average as most recently available;~~

~~[(j) Any portion of a policy or contract that constitutes an unallocated annuity contract issued to an employee pension benefit plan which provides fixed benefits and which is not an individual account plan;~~

~~[(k) Any portion of a financial guarantee, funding agreement, or guaranteed investment contract which (1) contains no mortality guarantees and (2) is not issued to or in connection with a specific employee benefit plan or a governmental lottery;~~

~~[Sec. 4.—CONSTRUCTION. This Act shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.~~

~~[Sec. 5.—DEFINITIONS. As used in this Act:~~

~~[(1) "Account" means any of the four accounts created under Section 6 of this Act.~~

[(2) "Association" means the Life, Accident, Health and Hospital Service Insurance Guaranty Association created under Section 6 of this Act.

[(3) "Commissioner" means the Commissioner of Insurance of this state:

[(4) "Contractual obligation" means any policy or contract benefit (including but not limited to death, disability, hospitalization, medical, premium deposits, advance premiums, supplemental contracts, cash surrender, loan, nonforfeiture, extended coverage, annuities, and coupon and dividend accumulations to the owner, beneficiary, assignee, certificate holder, or third-party beneficiary), arising from an insurance policy or annuity contract to which this Act applies, issued or assumed by an insurer who becomes an impaired insurer. A contractual obligation shall not include:

[(a) death benefits in an amount in excess of \$300,000 or a net cash surrender or net cash withdrawal value in an amount in excess of \$100,000 in the aggregate under one or more covered policies on any one life;

[(b) an amount in excess of \$100,000 in the aggregate under one or more annuity contracts within the scope of this Act issued to the same holder of individual annuity policies or to the same annuitant or participant under group annuity policies or an amount in excess of \$5,000,000 in unallocated annuity contract benefits with respect to any one contract holder irrespective of the number of such contracts;

[(c) an amount in excess of \$200,000 in the aggregate under one or more accident and health, accident, or health insurance policies on any one life;

[(d) any benefits that would have been payable under any group life, accident, or health policies or contracts of the impaired insurer for claims incurred after the next renewal date under those policies or contracts or 90 days, but in no event less than 60 days, after the date that a permanent receiver has been appointed for the insurer by a court of competent jurisdiction, whichever occurs first; or

[(e) punitive, exemplary, extracontractual, or bad faith damages, whether agreed to or assumed by an insurer or insured or imposed by a court of competent jurisdiction:

[If the impaired insurer has no assets within the State of Texas, or has insufficient assets to pay the expenses of administering the receivership or conservatorship of the impaired insurer, that portion of the expenses of administration incurred in the processing and payment of claims against the impaired insurer shall also be a contractual obligation under this Act.

[(5) "Covered policy" means any policy or contract within the scope of this Act under Section 3:

[(6) "Member insurer" means any insurance company authorized to transact in this state any kind of insurance to which this Act applies under Section 3:

[(7) "Insolvent insurer" means a member insurer whose minimum free surplus, if a mutual company, or whose required capital, if a stock company, becomes, after the effective date of this Act, impaired to the extent prohibited by law:

[(8) "Impaired insurer" means:

[(a) A member insurer which, after the effective date of this Act, is placed by the commissioner under an order of supervision, liquidation, rehabilitation, or conservation under the provisions of Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code), and that has been designated an "Impaired Insurer" by the commissioner, or

[(b) A member insurer determined in good faith by the commissioner after the effective date of this Act to be unable or potentially unable to fulfill its contractual obligations.

[(9) "Premiums" means direct gross insurance premiums and annuity considerations collected from persons residing or domiciled in the State of Texas on covered contracts and policies, less return premiums and considerations thereon and dividends paid or credited to policyholders on such direct business. "Premiums" do not include premiums and considerations on contracts between insurers and reinsurers nor do "premiums" include any premiums in excess of \$5,000,000 on any covered unallocated annuity contract. "Premiums" also do not include premiums received from the Treasury of the State of Texas or from the Treasury of the United States for insurance contracted for by the state or federal government for the purpose of providing welfare benefits to designated welfare recipients or for insurance contracted for by the state or federal government in accordance with or in furtherance of the provisions of Title 2, Human Resources Code, or the Federal Social Security Act. As used in Section 9, "premiums" are those for the calendar year preceding the determination of insolvency or impairment.

[(10) "State Board of Insurance" means the State Board of Insurance created under Article 1.02, Insurance Code, as amended.

[(11) "Moody's Corporate Bond Yield Average" means the Monthly Average Corporates as published by Moody's Investors Service, Inc., or any successor thereto.

[(12) "Unauthorized insurer" means a person or insurer that has engaged in activities prohibited by Section 3, Article 1.14-1 of this code.

[(13) "Nonmember of the association" includes, for the purposes of Section 12 of this Act, fraternal benefit societies, assessment-as-needed companies, and all persons and entities authorized to act as agents under this code who solicit policies and contracts to which this Act applies including, without limitation, legal reserve life insurance agents, and agents subject to Article 21.07 of this code and who participated in transactions involving types of insurance within the scope of this Act.

[(14) "Unallocated annuity contract" means any annuity contract or group annuity certificate that is not issued to and owned by an individual person including guaranteed interest contracts and deposit administration contracts, except to the extent any annuity benefits under that contract or certificate are guaranteed to an individual person by an insurer.

[Sec. 6. CREATION OF THE ASSOCIATION. (1) There is created hereby a nonprofit legal entity to be known as the Life, Accident, Health and Hospital Service Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this state. The association shall perform its functions under the plan of operation established and approved under Section 10 below, and shall exercise its powers through a board of directors established under Section 7 below. For purposes of administration and assessment, the association shall establish four accounts:

- [(a) The accident, health and hospital services account;
- [(b) The life insurance account;
- [(c) The annuity account; and
- [(d) The administrative account.

[(2) The association shall come under the immediate supervision of the commissioner and shall be subject to the applicable provisions of the insurance laws of this state.

[Sec. 7. BOARD OF DIRECTORS. (1) The State Board of Insurance shall appoint a board of directors of the association consisting of nine members, three

of whom shall be chosen from employees or officers chosen from the ten member companies having the largest total direct premium income based on the latest financial statement on file at date of appointment, two of whom shall be chosen from the other companies to give fair representation to all such member insurers based on due consideration of their varying categories of premium income and geographical location, and four of whom shall be representatives of the general public. Members serve for six-year staggered terms, with the terms of three members expiring each odd-numbered year. All directors shall serve until their successors are appointed, except that in the case of any vacancy, the unexpired term of office shall be filled by the appointment of a director by the State Board of Insurance. Should any director cease to be an officer or employee of a member insurer during his term of office, such office shall become vacant until his successor shall have been appointed. All directors shall be eligible to succeed themselves in office. A public representative may not be:

(A) an officer, director, or employee of an insurance company, insurance agency, agent, broker, solicitor, adjuster, or any other business entity regulated by the State Board of Insurance;

(B) a person required to register with the secretary of state under Chapter 305, Government Code; or

(C) related to a person described by Subparagraph (A) or (B) of this paragraph within the second degree of affinity or consanguinity.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

(3) Each director of the association shall file a financial statement with the secretary of state in accordance with Sections 3 and 4, Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes).

[Sec. 8. **POWERS AND DUTIES OF THE ASSOCIATION.** In addition to the powers and duties enumerated in other sections of this Act,

(1) If a member insurer becomes an insolvent insurer, as that term is herein defined, and has been designated an "Impaired Insurer" by the commissioner, the association shall, upon entry by a court of competent jurisdiction after the effective date of this Act of an order appointing a receiver, either temporary or permanent, to take charge of the assets of such insolvent insurer, subject to any reasonable conditions imposed by the association and approved by the commissioner, guarantee, assume or reinsure, or cause to be guaranteed, assumed, or reinsured, the covered policies of such insolvent insurer, and shall make or cause to be made prompt payment of the contractual obligations of such insolvent insurer.

(2) If a member insurer becomes an impaired insurer, as that term is herein defined, the association may, subject to any conditions imposed by the association other than those which impair the contractual obligations of the impaired insurer, and approved by the impaired insurer and the commissioner:

(a) guarantee or reinsure, or cause to be guaranteed or reinsured, the impaired insurer's covered policies; or

(b) provide such moneys, pledges, notes, guarantees or other means as are proper to effectuate Subparagraph (a) above, and assure payment of the impaired insurer's contractual obligations pending action under Subparagraph (a) above; or

(c) loan money to the impaired insurer.

(3) In carrying out its duties under Paragraphs (1) and (2), above, the association may impose moratoriums or policy liens against the nonforfeiture values of any contractual obligation under a covered policy; and

~~[(4) The association may render assistance and advice to the commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer.~~

~~[(5) The association shall have standing to appear before any court in this state with jurisdiction over an insolvent insurer or an impaired insurer concerning which the association is or may become obligated under this Act. Such standing shall extend to all matters germane to the powers and duties of the association, including, but not limited to, proposals for reinsuring or guaranteeing the covered policies of the insolvent insurer or the impaired insurer and the termination of the covered policies and contractual obligations:~~

~~[(6) (a) Any person receiving benefits under this Act shall be deemed to have assigned his rights under the covered policy to the association to the extent of the benefits received because of this Act whether the benefits are payments of contractual obligations or continuation of coverage. The association may require an assignment to it of such rights by any payee, policy or contract owner, beneficiary, insured or annuitant as a condition precedent to the receipt of any rights or benefits conferred by this Act upon such person. The association shall be subrogated to these rights against the assets of any impaired insurer.~~

~~[(b) The subrogation rights of the association under this subsection shall have the same priority against the assets of the insolvent insurer or the impaired insurer as that possessed by the person entitled to receive benefits under this Act.~~

~~[(7) The contractual obligations of the insolvent insurer or impaired insurer for which the association becomes or may become liable shall be as great as but no greater than the contractual obligations of the insolvent insurer or impaired insurer would have been in the absence of an impairment unless such obligations are reduced as permitted by Paragraph (3).~~

~~[(8) The association may:~~

~~[(a) enter into such contracts as are necessary or proper to carry out the provisions and purposes of this Act;~~

~~[(b) sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments under Section 9;~~

~~[(c) borrow money to effect the purposes of this Act. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets;~~

~~[(d) employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;~~

~~[(e) negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association;~~

~~[(f) take such legal action as may be necessary to avoid payment of improper claims;~~

~~[(g) exercise, for the purposes of this Act and to the extent approved by the commissioner, the powers of a domestic life or health insurer, but in no case may the association issue insurance policies or annuity contracts other than those issued to perform the contractual obligations of the impaired insurer.~~

~~[Sec. 9. ASSESSMENTS. (1) For the purpose of providing the funds necessary to carry out the powers and duties of the association, the board of directors shall determine the amount necessary and the commissioner shall assess the member insurers, separately for each account established by Section 6 of this Act, at such times and for such amounts as the board of directors finds necessary. All~~

assessments ordered by the commissioner shall be payable to the association and are due on a date specified by the commissioner which may not be earlier than the 30th day after the date on which prior written notice is given to the member insurers. Interest accrues on the unpaid amount at a rate of 10 percent beginning on the due date.

[(2) There shall be two classes of assessments, as follows:

[(a) Class A assessments shall be made for the purpose of meeting administrative costs of the association, the administrative expenses properly incurred under Subsection (1) of Section 12 of this Act relating to any unauthorized insurer or nonmember of the association, and other general expenses not related to a particular insolvent or impaired insurer;

[(b) Class B assessments shall be made to the extent necessary to carry out the powers and duties of the association under Section 8 with regard to an insolvent or impaired insurer.

[(3)(a) The amount of any Class A assessment for each account shall be determined by the board of directors taking into consideration one or more of the following: annual premium receipts, admitted assets, or insurance in force, as reflected in the annual statements for the year preceding the assessment. The amount of any Class B assessment shall be divided among the separate accounts as reflected in the annual statements for the year preceding the assessment in the same proportion that the premiums from the policies covered by each account were received by such insolvent or impaired insurer from all covered policies during the year preceding impairment;

[(b) Class A assessments shall be allowed as a credit on the amount of premium taxes in the manner provided by Article 1.16 of this code. Class B assessments against member insurers for each account shall be in the proportion that premiums received on all business by each assessed member insurer on policies covered by each account bears to such premiums received on all business by all assessed member insurers;

[(c) Assessments for funds to meet the requirements of the association with respect to an insolvent or impaired insurer shall not be made until necessary to implement the purposes of this Act. Classification of assessments under Paragraph (2), above, and computation of assessments under this paragraph shall be made with a reasonable degree of accuracy, recognizing that exact determinations may not always be possible.

[(4) The commissioner may abate or defer, in whole or in part, the assessment of a member insurer if, in the opinion of the commissioner, payment of the assessment would endanger the ability of the member insurer to fulfill its contractual obligations. The total of all assessments upon a member insurer for each account shall not in any one calendar year exceed one percent of such insurer's premiums on the policies covered by the account.

[(5) In the event an assessment against a member insurer is abated or deferred, in whole or in part, because of the limitations set forth in Paragraph (4); above, the amount by which such assessment is abated or deferred, may be assessed against the other member insurers in a manner consistent with the basis for assessments set forth in this paragraph. If the maximum assessment, together with the other assets of the association, does not provide in any one year an amount sufficient to carry out the responsibilities of the association, the necessary additional funds shall be assessed as soon thereafter as permitted by this Act.

[(6) The board of directors may, by an equitable method as established in the plan of operation, refund to member insurers, in proportion to the contribution of each member insurer, the amount by which the assets exceed the amount the board of directors finds is necessary to carry out during the coming year the obligations of the association with regard to that amount, including assets

accruing from net realized gains and income from investments. A reasonable amount may be retained to provide funds for the continuing expenses of the association and for future losses if refunds are impractical.

[(7) The association shall issue to each insurer paying a Class B assessment under this Act a certificate of contribution, in a form prescribed by the commissioner, for the amount so paid. All outstanding certificates shall be of equal dignity and priority without reference to amounts or date of issue.

[(8) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due. Any insurer whose certificate of authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

[(9) The provisions of this section shall be valid and enforceable so long as the provisions of Section 19 remain in full force and effect.

[(10) The amounts provided pursuant to assessments made under this section are considered to be supplemental to the marshaling of assets for the purpose of making payments on behalf of an impaired insurer.

[Sec. 10. PLAN OF OPERATION. (1)(a) The association shall submit to the commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the State Board of Insurance;

[(b) If the association fails to submit a suitable plan of operation within 180 days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the commissioner or superseded by a plan submitted by the association and approved by the commissioner.

[(2) All member insurers shall comply with the plan of operation.

[(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

[(a) establish procedures for handling the assets of the association;

[(b) establish the amount and method of reimbursing members of the board of directors under Section 7;

[(c) establish regular places and times for meetings of the board of directors;

[(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

[(e) establish any additional procedures for assessments under Section 9;

[(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

[(4) The plan of operation may provide that any or all powers and duties of the association, except those under Paragraph (8)(c) of Section 8 and Section 9, are delegated to a corporation, association, or other organization which performs or will perform functions similar to those of the association, or its equivalent, in two or more states. Such a corporation, association, or organization shall be reimbursed for any payments made on behalf of the association and shall be paid for its performance of any function of the association. A delegation under this paragraph shall take effect only with the approval of the board of directors, the commissioner, and the court in which the delinquency proceeding, if any, is pending and may be made only to a corporation, association, or organization which extends protection not less favorably and effectively than that provided by this Act.

~~[Sec. 11. DUTIES AND POWERS OF THE COMMISSIONER. In addition to the duties and powers enumerated elsewhere in this Act;~~

~~[(1) The commissioner shall:~~

~~[(a) notify the board of directors of the existence of an insolvent or an impaired insurer not later than three days after a determination of impairment is made or after receipt of notice of impairment, whichever is earlier. The commissioner shall within three days notify the association of a member insurer placed under supervision pursuant to Article 21.28, Insurance Code, as amended, and Chapter 281, Acts of the 60th Legislature, Regular Session, 1967 (Article 21.28-A, Vernon's Texas Insurance Code);~~

~~[(b) upon request of the board of directors provide the association with a statement of the premiums for each member insurer.~~

~~[(2) The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact insurance in this state of any member insurer which fails to comply with the plan of operation. As an alternative the commissioner may levy a forfeiture upon any member insurer which fails to pay an assessment when due. Such forfeiture shall not exceed five percent of the unpaid assessment per month, but no forfeiture shall be less than \$100 per month. Any forfeiture paid under this section shall be paid by the member insurer to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.~~

~~[(3) Any action of the board of directors or the association may be appealed to the commissioner by any member insurer if such appeal is taken within 30 days of the action being appealed. Any final action or order of the commissioner shall be subject to appeal to the State Board of Insurance and to judicial review as provided in Sections (d) and (f), Article 1.04, Insurance Code, as amended.~~

~~[Sec. 12. PREVENTION OF INSOLVENCIES AND IMPAIRMENTS, ADMINISTRATION OF ESTATES. To aid in the detection and prevention of insurer insolvencies and impairments and in the administration of receivership and conservatorship estates:~~

~~[(1) The board of directors shall notify the commissioner of any information indicating any member or unauthorized insurer or nonmember of the association may be unable or potentially unable to fulfill its contracts, policies, or contractual obligations and may request appropriate investigation and action by the commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate. In carrying out its duties under this Act, upon written request by the commissioner, the board of directors shall authorize expenditure of funds from the administrative account for reasonable and necessary administrative expenses incurred by a supervisor or conservator appointed by the commissioner or a receiver appointed by a court of competent jurisdiction for a nonmember of the association or unauthorized insurer operating in this state in those instances in which the commissioner has notified the board of directors or the board of directors has otherwise become aware that:~~

~~[(A) the nonmember of the association or unauthorized insurer has insufficient liquid assets to pay the expenses of administering the receivership or conservatorship of the nonmember of the association or unauthorized insurer;~~

~~[(B) insufficient funds are available from abandoned funds as provided by Section 8, Article 21.28, of this code; and~~

~~[(C) insufficient funds are available to the State Board of Insurance from appropriations for use in meeting the administrative expenses.~~

~~[Funds spent by the association pursuant to this subsection do not become assets of the nonmember of the association or unauthorized insurer but are a special fund loaned to the receiver or the conservator for payment of administrative~~

expenses, which loan shall be repayable to the extent available from the funds of such nonmember of the association or unauthorized insurer.

[(2) The board of directors shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. The board of directors shall notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors and employees of an insolvent or impaired insurer (or an insurer the commissioner considers to be in danger of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

[The board of directors shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator or conservator appointed by the commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

[(3) The board of directors may make reports and recommendations to the commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the commissioner, liquidator or conservator shall not be considered public documents and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation or individual recommendation by the board of directors or members to the commissioner, liquidator or conservator.

[(4) The board of directors may make recommendations to the commissioner for the detection and prevention of member insurer impairments.

[(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this Act or exercised any of its powers under this Act, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the commissioner.

[(6) Any insurer that has an officer, director or employee serving as a member of the board of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

~~[(7) The association or any insurer assessed under this Act shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended:~~

~~[Sec. 13. MISCELLANEOUS PROVISIONS. (1) Records shall be kept of all negotiations and meetings in which the association or its representatives are involved to discuss the activities of the association in carrying out its powers and duties under Section 8. Records of all such negotiations or meetings shall be made public only upon the termination of a receivership, liquidation, rehabilitation, conservatorship proceeding involving the insolvent insurer or impaired insurer, or upon the order of a court of competent jurisdiction. Nothing in this paragraph shall limit the duty of the association to render a report of its activities under Section 14.~~

~~[(2) For the purpose of carrying out its obligations under this Act, the association shall be deemed to be a creditor of the insolvent insurer or impaired insurer to the extent of assets attributable to covered policies reduced by any amounts to which the association is entitled as subrogee pursuant to Paragraph (6) of Section 8.~~

~~[(3) No distribution to stockholders, if any, of an insolvent or impaired insurer shall be made until and unless the total amount of assessments levied by the commissioner with respect to such insurer has been fully recovered by the association.~~

~~[(4) The use in any manner of the protection afforded by this Act by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Texas Insurance Code, as amended, and shall be subject to the provisions thereof.~~

~~[(5)(a) If an order for receivership, liquidation, rehabilitation, or conservatorship of a member insurer has been entered, the receiver appointed under such order shall have the right to recover on behalf of such insurer from any affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it the amount of distributions, other than stock dividends paid by such insurer on its capital stock, at any time during the five years preceding the petition for receivership, liquidation, rehabilitation, or conservatorship, subject to the limitations of Subparagraphs (b) to (d), below:~~

~~[(b) No such dividend shall be recoverable if the insurer shows that when paid the distribution was lawful and reasonable, and that the insurer did not know and could not reasonably have known that the distribution might adversely affect the ability of the insurer to fulfill its contractual obligations:~~

~~[(c) Any person who was an affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled the insurer at the time the distributions were paid shall be liable up to the amount of distributions he received. If two persons are liable with respect to the same distributions, they shall be jointly and severally liable.~~

~~[(d) The maximum amount recoverable under this paragraph shall be the amount needed in excess of all other available assets of the insolvent insurer or impaired insurer to pay the contractual obligations of such insurer.~~

~~[(e) If any person liable under Subparagraph (c) is insolvent, all its affiliates as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code), that controlled it at the time the dividend was paid shall be jointly and severally liable for any resulting deficiency in the amount recovered from the insolvent affiliate as defined in Section 1, Chapter 356, Acts of the 62nd Legislature, Regular Session, 1971 (Article 21.49-1, Vernon's Texas Insurance Code).~~

~~[(f) Claims against an impaired insurer placed under an order of liquidation, rehabilitation, or conservation shall be processed and acted on by the receiver in the same manner as other claims under Article 21-28 of this code.~~

~~[(g) A person who has a claim against an insurer under a provision in an insurance policy, other than a policy of an impaired insurer, that also is a contractual obligation under this Act must first exhaust his right under that policy. The amount of an approved claim under this Act shall be reduced by the policy limits of or amount paid under that insurance policy, whichever amount is greater. If a claimant exhausts his right under a policy other than a policy of an impaired insurer, the insurer issuing that policy is not entitled to sue or continue a suit against the insured of the impaired insurer to recover an amount paid the claimant under that policy. Notwithstanding the foregoing, a person having a contractual obligation as defined by this Act under a life insurance policy or annuity contract issued by an impaired insurer is not required to exhaust other coverage for that claim, and the amount of an approved claim under a life insurance policy or annuity contract issued by an impaired insurer may not be reduced because of that duplicate coverage.~~

~~[Sec. 14. EXAMINATION OF THE ASSOCIATION, ANNUAL REPORT. The association shall be subject to examination and regulation by the commissioner. The board of directors shall submit to the commissioner, not later than May 1 of each year, a financial report for the preceding calendar year in a form approved by the commissioner and a report of its activities during the preceding calendar year.~~

~~[Sec. 15. TAX EXEMPTIONS. The association shall be exempt from payment of all fees and all taxes levied by this state or any of its subdivisions, except taxes levied on real property.~~

~~[Sec. 16. IMMUNITY. There shall be no liability on the part of and no cause of action of any nature shall arise against any member insurer or its agents, or employees, the association or its agents or employees, members of the board of directors, or the commissioner or his representatives, for any action taken or not taken by them in the performance of their powers and duties under this Act.~~

~~[Sec. 17. CONTINUING TO WRITE INSURANCE POLICIES. Companies subject to the provisions of this Act shall not be liable for assessments for contractual obligations arising from insurance policies issued or renewed after the effective date of and while an impaired insurer is subject to an order by the commissioner of insurance placing an impaired insurer in conservatorship unless the commissioner, in his order appointing the conservator, directs the conservator to continue the issuance or renewal of insurance policies, under such terms and conditions as the commissioner may prescribe. The commissioner shall furnish a copy of such order to the board of directors of the association. In the event that the commissioner, in his original order appointing the conservator, directs the conservator to continue the issuance or renewal of insurance policies in the impaired insurer, companies subject to the provisions of this Act shall not be liable for assessments for claims arising from insurance policies issued or renewed more than 90 days after the date of the commissioner's order appointing the conservator unless the commissioner, prior to the expiration of such 90-day period, determines, after public hearing, that it is in the best interests of the policyholders of the impaired insurer or in the public interest for the impaired insurer to continue the issuance or renewal of insurance policies. At least 10 days notice of such hearing shall be given to the board of directors of the association. The board of directors shall have the right to appear at and participate in the hearing. The conservator or his representative shall appear at such hearing and present evidence why it would be in the best interest of the policyholders of the impaired insurer to continue the issuance or renewal of policies. Nothing in this section limits the liability of~~

companies subject to this Act for assessments for claims presented after an impaired insurer is placed in receivership:

~~[Sec. 18.— RELEASE FROM CONSERVATORSHIP OR RECEIVERSHIP. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the amount of Class B assessments paid to the association to carry out the duties of the association under Section 8 in relation to such insurer the amount paid; provided, however, the commissioner may, upon application of the board of directors of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.]~~

~~[Sec. 19.— TAX WRITE-OFFS OF CERTIFICATE OF CONTRIBUTION. (1) Unless a longer period of time has been required by the commissioner, a member insurer shall at its option have the right to show a certificate of contribution as an admitted asset in the form approved by the commissioner pursuant to Section 9; Paragraph (7), at percentages of the original face amount approved by the commissioner, for calendar years as follows:~~

~~[100 percent for the calendar year of issuance, which shall be reduced 10 percent a year for each year thereafter for a period of 10 years;~~

~~[(2) The insurer may offset the amount written off by it in a calendar year under Paragraph (1), above, against its premium tax liability to this state accrued with respect to business transacted in such year. Provided, however, an insurer may not be required to write off in any one year, an amount in excess of its premium tax liability to this state accruing within such year.~~

~~[(3) Any sums acquired by refund, pursuant to Paragraph (6) of Section 9, from the association which have theretofore been written off by contributing insurers and offset against premium taxes as provided in Paragraph (2), above, and are not then needed for purposes of this Act, shall be paid by the association to the commissioner and by him deposited with the state treasurer for credit to the general fund of this state.]~~

~~[Sec. 20.— RULES AND REGULATIONS. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this Act, and in augmentation thereof.]~~

~~[Sec. 20A.— CONFLICTS OF LAW. In the event of conflict between this Act and other law relating to the subject matter of this Act or its application, this Act controls, except that Articles 21.28 and 21.28-A of this code always prevail over this Act.]~~

SECTION 1.22. Section 4A, Article 21.28-A, Insurance Code, is amended by adding Subsection (e) to read as follows:

(e) This section does not apply to:

(1) any life, accident, or health insurance policy or contract delivered or issued for delivery by an insurer that is subject to any provision of Chapter 3, 11, 14, or 22 of this code;

(2) any contract or certificate that is delivered or issued for delivery by a group hospital service corporation organized under Chapter 20 of this code;
or

(3) any contract or evidence of coverage delivered or issued for delivery by a health maintenance organization operating under a certificate of

authority issued under the Texas Health Maintenance Organization Act (Chapter 20A, Vernon's Texas Insurance Code).

SECTION 1.23. Section 11(b), Article 21.54, Insurance Code, is amended to read as follows:

(b) No claim against a purchasing group or its members shall be entitled to payment from any insurance insolvency guaranty fund or similar mechanism in this state, nor shall a purchasing group or its members or claimants against the group or its members receive any benefit from such fund for claims arising under the insurance policies procured through the purchasing group unless the policies are underwritten by insurance companies that are licensed in this state and have capital and surplus of at least \$25 million at the time of policy issuance.

SECTION 1.24. Section 404.102(a), Government Code, is amended to read as follows:

(a) The treasurer may incorporate a special-purpose trust company called the Texas Treasury Safekeeping Trust Company. The purposes of the trust company are to provide a means for the treasurer to obtain direct access to services provided by the Federal Reserve System and to enable the treasurer to manage, disburse, transfer, safekeep, and invest [public] funds and securities more efficiently and economically. The treasurer may deposit [public] funds and securities with the trust company to achieve its purpose.

SECTION 1.25. Section 404.103(a), Government Code, is amended to read as follows:

(a) The trust company may receive, transfer, and disburse money and securities as provided by statute or belonging to the state, agencies and local political subdivisions of the state, and nonprofit corporations, foundations, and other charitable organizations created on behalf of the state or an agency or local political subdivision of the state in a manner that qualifies the trust company as a "depository institution" as defined by Section 19, Federal Reserve Act (12 U.S.C. Section 461).

SECTION 1.26. (a) Except as provided by Subsection (b) or (c) of this section, this article takes effect January 1, 1992, and applies only to liquidation proceedings initiated against an insurer or agent declared insolvent or impaired on or after that date and to assessments made in relation to those proceedings, and a proceeding initiated against an insurer or agent that is declared insolvent or impaired before that date is governed by the law in effect on the date that the declaration was made and the former law is continued in effect for that purpose.

(b) A guaranty association established under Article 9.48, 21.28-C, or 21.28-D, Insurance Code, may elect to assume control of liquidation proceedings initiated before January 1, 1992. A proceeding covered by such an election is subject to Article 9.48, 21.28-C, or 21.28-D, as appropriate, as amended by this article. On and after January 1, 1994, the appropriate guaranty association shall assume control over any proceeding outstanding on that date that was initiated under Article 9.48, 21.28-C, or 21.28-D, Insurance Code, as those articles existed before amendment by this article.

(c) Section 1.05 of this article takes effect January 1, 1992, and applies to liquidations proceedings initiated against an insurer or agent declared insolvent or impaired before, on, or after that date.

Amendment No. 2

Amend C.S.H.B. 6 as follows:

SECTION 14.01. Subchapter G, Chapter 5, Insurance Code, is amended by adding Article 5.76-3 to read as follows:

Art. 5.76-3. TEXAS WORKERS' COMPENSATION INSURANCE FUND

Sec. 1. DEFINITIONS. In this article:

- (1) "Board" means the board of directors of the fund.
 (2) "Commission" means the Texas Workers' Compensation Commission.
 (3) "Fund" means the Texas Workers' Compensation Insurance Fund.

(4) "Workers' compensation insurance" means the insurance for any risk under the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes), the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Section 901), the Federal Mine Safety and Health Act of 1977 (33 U.S.C. Section 801 et seq.), or Article 8309h, Revised Statutes.

Sec. 2. CREATION; OPERATION. (a) The Texas Workers' Compensation Insurance Fund is created as a corporate body with the powers provided in this article and with all general corporate powers incident to its operation as a corporate body. The fund shall be a nonprofit organization which is neither more nor less than self-supporting.

(b) The fund shall begin organizational operations on January 1, 1992.

(c) The fund shall begin underwriting operations on July 1, 1992.

(d) Except as otherwise provided by this subsection, the fund is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967 (Article 6252-17, Vernon's Texas Civil Statutes), and the open records law, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes). The board may hold closed meetings to consider and refuse to release information relating to claims, rates, the fund's underwriting guidelines, and other information that would give advantage to competitors or bidders.

Sec. 3. BOARD OF DIRECTORS. (a) The fund is governed by a board of directors composed of five members, all of whom shall be citizens of this state. The members shall be appointed by the governor with the advice and consent of the senate, and vacancies shall be filled in the same manner. The members of the board of directors serve staggered five-year terms, with the term of one member expiring February 1 of each year.

(b) Except as provided by Subsection (c) of this section, to be eligible for appointment as a member of the board a person must be a policyholder of the fund or an officer or employee of a policyholder and must maintain that status during the period of service on the board. Failure to maintain that status disqualifies the board member and creates a vacancy on the board.

(c) The initial appointees to the board must be employers in this state.

(d) In making appointments to the board, the governor shall attempt to reflect the social, geographic, and economic diversity of the state. To ensure balanced representation, the governor may consider the geographic location of a prospective appointee's domicile and the prospective appointee's experience in business and insurance matters and shall consider those factors in appointing members to fill vacancies on the board.

(e) A person may not serve as a member of the board if the person, an individual related to the person within the second degree by consanguinity or affinity, or an individual residing in the same household with the person:

(1) is required to be registered or licensed under this code;

(2) is employed by or acts as a consultant to a person required to be registered or licensed under this code;

(3) owns, controls, has a financial interest in, or participates in the management of an organization required to be registered or licensed under this code;

(4) receives a substantial tangible benefit from the fund or the Texas Department of Insurance;

(5) is an officer, employee, or consultant of an association in the field of insurance; or

(6) is required to register as a lobbyist under Chapter 305, Government Code.

(f) Subsection (e) of this section does not prohibit a person who is only a consumer of insurance or insurance products from serving as a member of the board.

(g) A person who is ineligible to serve on the board under Subsection (e) of this section may not serve as a member of the board for one year after the date on which the condition that makes the person ineligible ends.

(h) Each member shall receive actual and necessary travel expenses and expenses incurred in the performance of the member's duties as a member.

(i) The members of the board shall elect annually from their number a chairman, a vice-chairman, and a secretary.

(j) The board shall hold meetings at least once each month and at other times at the call of the chairman and at times established by board rule. Special meetings may be called by any two members of the board on two days notice.

(k) A majority of the board members constitutes a quorum.

(l) The board shall maintain the principal office of the fund in Austin, Texas.

(m) For cost control purposes and as is determined to be cost-effective, as many functions as possible shall be performed by the fund.

Sec. 4. AUTHORITY AND PURPOSE. (a) According to this article and the plan of operation, the board shall, on behalf of the fund:

(1) provide for the acceptance or rejection of applications and delivery or issuance for delivery in this state of workers' compensation insurance and for the transaction of workers' compensation insurance business to the same extent as any other insurance carrier transacting workers' compensation insurance business in this state;

(2) enter into and approve contracts;

(3) propose rates for workers' compensation insurance issued by the fund;

(4) appoint and supervise the activities of the manager of the fund and other officers and employees;

(5) adopt necessary bylaws and rules for the operation of the fund;

(6) delegate specific responsibilities to the manager of the fund;

(7) develop a general plan of operation, in accordance with Section 5 of this article, to assure the orderly management and operation of the fund; and

(8) exercise any other authority necessary to conduct a workers' compensation insurance business for the fund.

(b) The fund may not have affiliates, interlocking boards of directors, spinoffs, or subsidiaries.

Sec. 5. PLAN OF OPERATION. (a) The initial board of directors shall prepare and adopt a plan of operation that is consistent with this article. The plan must provide for the:

(1) economic, fair, and nondiscriminatory administration of the fund and its duties;

(2) prompt and efficient provision of workers' compensation insurance;

(3) establishment of necessary facilities;

(4) management of the fund;

(5) reasonable and objective underwriting standards; and

(6) obtainment of reinsurance.

(b) The initial plan of operation is subject to approval by the State Board of Insurance.

(c) With consent of the State Board of Insurance, the board may amend the plan of operation to provide for operation of the fund in a manner consistent with this article.

Sec. 6. MANAGER AND CHIEF EXECUTIVE OFFICER. (a) The board shall appoint a person to serve as manager and chief executive officer who serves at the pleasure of the board. The board shall appoint other officers as necessary to manage the fund prudently.

(b) To be eligible for appointment as manager, an individual must have had at least 10 years of administrative or professional experience and training and experience in the field of insurance.

(c) The manager shall manage and conduct the affairs of the fund under the general supervision of the board and shall perform duties as provided by this article and as directed by the board.

(d) In addition to any other duties provided by this article or by the board, the manager shall:

(1) hire employees as necessary to conduct the business and carry out the provisions of this article or to perform the duties imposed on the manager by this article;

(2) receive and approve applications for workers' compensation insurance and issue policies to applicants who are eligible for workers' compensation insurance provided by the fund;

(3) negotiate contracts on behalf of the fund;

(4) issue renewals of workers' compensation insurance for those who qualify for renewal;

(5) process and pay valid claims according to the rules of the board and the appropriate workers' compensation insurance laws;

(6) collect premiums for workers' compensation insurance issued or renewed by the fund; and

(7) collect and compile statistical information relating to the fund and provide this information to the board.

(e) In addition to any other authority provided by this article or by the board, the manager shall have full power and authority, in the name of the fund, to:

(1) sue and be sued in all of the courts of the state in all actions arising out of any act, deed, matter, or things made, omitted, entered into, done, or suffered in connection with the fund and its administration, management, or conduct of its business and affairs;

(2) delegate to any officer of the fund, subject to any conditions prescribed by the manager, any of the powers, functions, or duties conferred or imposed on the manager under this article in connection with the fund, its administration, management, and conduct of business or related affairs; an officer to whom such a delegation is made may exercise the delegated powers with the same force and effect as the manager, subject to approval by the manager;

(3) inspect and audit employers who apply to the fund for issuance of workers' compensation insurance or who seek renewal of that insurance;

(4) purchase reinsurance from insurance carriers admitted or accredited to reinsure risks in this state;

(5) cancel or refuse to renew workers' compensation insurance if a risk does not comply with a board-approved plan or any provision of this article;

(6) with the approval of the board, enter into contracts on behalf of the fund;

(7) draft guidelines for approval of the board relating to the settlement of claims against the fund; and

(8) perform any other acts authorized by the board to carry out this article and the rules of the board.

Sec. 7. APPLICATIONS. (a) Applications to the fund shall be submitted on forms prescribed by the board and shall be made directly by the applicant.

(b) The fund shall adopt such rules as required to provide for the financing of all or part of the premiums by the fund or a person licensed under Chapter 24 of this code. Those rules shall require that the fund receive a minimum initial premium sufficient to cover the administrative costs of issuing and booking the policy in the event of cancellation.

(b) If the premium is financed by the fund as provided by Subsection (b) of this section, the payment deferred earns interest payable to the fund at a rate annually determined by the board based on the auction rate quoted on a discount basis for 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the date nearest to the date on which the interest rate is determined.

(c) If an applicant is identified as a credit risk, the fund may refuse to write insurance coverage if the applicant does not:

(1) pay the total estimated premium and related charges before the policy is issued; or

(2) provide security for payment of the total estimated premium and related charges before the policy is issued.

Sec. 8. LIABILITY. Neither a member of the board nor the manager or any officer or employee of the fund is personally liable in the person's private capacity for any act performed or for any contract or other obligation entered into or undertaken in an official capacity in good faith and without intent to defraud, in connection with the administration, management, or conduct of the fund, its business, or other related affairs.

Sec. 9. RATES. (a) The fund shall be authorized to write workers' compensation insurance at 80 percent to 95 percent of the manual rates promulgated by the State Board of Insurance. Within 30 days of a rate hearing or a rate change by the State Board of Insurance, the board of directors is directed to file a rate of between 80 percent and 95 percent of the promulgated rates for approval by the board. The board shall grant its approval or denial within 30 days of receipt of the rate filing. Should the board deny approval, the fund shall write insurance at the rate previously on file with the board, or at 95 percent of the board's most recently approved manual rates, as directed by the board.

(b) Rates shall be set in amounts sufficient, when invested, to:

(1) carry all claims to maturity;

(2) meet the reasonable expenses of conducting the business of the fund; and

(3) maintain a reasonable surplus.

(c) Notwithstanding any other provision of this article, the fund may establish multitiered premium systems to provide workers' compensation insurance to insureds who would not otherwise meet the fund's underwriting standards. Those multitiered systems shall be filed in accordance with Article 5.55 of this code. The systems may provide for higher premium payments by insureds who present higher than normal risks within a class.

(d) The fund shall be subject to the data reporting requirements applicable to all other carriers.

(e) The fund is subject to examination and regulation of its reserves in the manner prescribed by Article 5.61, Insurance Code.

(f) The fund is subject to the same premium discount, experience rating, and other factors that relate to writing individual subscriber's policies as all other carriers under the Insurance Code and the rules and regulations of the State Board of Insurance. The State Board of Insurance shall be responsible for experience-rating employer members of the fund.

Sec. 10. EXPENSE LIMITATION; ADJUSTING OF CLAIMS. (a) The fund is directed to limit overhead expenses to the lowest possible amount, while providing adequate safety, adjustment and rehabilitation services. In no event should total expenses, including overhead expenses, wages, loss adjustment expenses, tax expenses, and all other expenses and obligations other than benefits, exceed 20 percent of earned premiums.

(b) The fund is directed to adjust claims in such manner as to limit loss adjustment expenses to the lowest reasonable amount. Specifically, the fund is directed to pay claims in a timely manner, to attempt to work with the injured worker to pay compensation as it accrues and to alleviate hardship where feasible, and to contest claims only where clearly merited.

(c) The fund may not pay commissions to insurance agents, other than salaries to in-house agents, and may not advertise. The fund is to maintain an aggressive strategy of publicizing its operations through public service announcements, the free press and other cost-effective events or opportunities. The commission shall assist the fund in disseminating information to employers about the fund operations.

Sec. 11. INTERACTION WITH THE FACILITY. The fund may write coverage for any employer in this state. The fund is directed to make every effort to write small premium policies and policies where the employer has a credit modifier with due regard for the solvency of the fund. An employer must be rejected by two carriers in the voluntary market as well as the fund before being assigned to the facility. The fund is not a member of the facility.

Sec. 12. REHABILITATION. (a) The fund is directed to contract with the appropriate state agency for rehabilitation services for employees who qualify under a plan developed by the manager and approved by the board of directors. The fund shall reimburse the appropriate state agency for the reasonable cost of services provided under this section.

(b) The fund is authorized to grant premium discounts to employers who participate in an employee rehabilitation or retraining program developed and approved by the commission.

Sec. 13. ACCIDENT PREVENTION. (a) The fund may make and enforce rules for the prevention of injuries to employees of its policyholders or applicants for insurance under this article. For this purpose, representatives of the fund, representatives of the commission, or representatives of the Texas Department of Insurance on reasonable notice shall be granted free access to the premises of each policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any rule prescribed by the fund for the prevention of injuries, or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant, constitutes sufficient grounds for the fund to cancel a policy or deny an application for insurance.

(c) A policyholder in the fund shall obtain a safety consultation if the policyholder:

(1) has an experience modifier greater than 1.25; or

(2) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available.

(d) A policyholder in the fund shall obtain a safety consultation as required by the fund if the policyholder:

(1) has been in business for less than three years; and

(2) meets criteria for a safety consultation established by the fund, which may include the number and classification of employees, the policyholder's industry, and the policyholder's previous workers' compensation experience in this state or another jurisdiction.

(e) The policyholder shall obtain the safety consultation not later than the 30th day after the effective date of the policy and shall obtain the safety consultation from the health and safety division of the commission, the fund, or another professional source approved for that purpose by the health and safety division. The safety consultant shall file a written report with the commission and the policyholder setting out any hazardous conditions or practices identified by the safety consultation.

(f) The policyholder and the consultant shall develop a specific accident prevention plan that addresses the hazards identified by the consultant. The safety consultant may approve an existing accident prevention plan. The policyholder shall comply with the accident prevention plan.

(g) The health and safety division may investigate accidents occurring at the work sites of a policyholder for whom a plan has been developed under Subsection (f) of this section, and the division may otherwise monitor the implementation of the accident prevention plan as it finds necessary.

(h) In accordance with rules adopted by the commission, not earlier than 90 days or later than six months after the development of an accident prevention plan under Subsection (f) of this section, the health and safety division of the commission shall conduct a follow-up inspection of the policyholder's premises. The commission may require the participation of the safety consultant who performed the initial consultation and developed the safety plan. If the health and safety division of the commission determines that the policyholder has complied with the terms of the accident prevention plan or has implemented other accepted corrective measures, the health and safety division shall so certify. If a policyholder fails or refuses to implement the accident prevention plan or other suitable hazard abatement measures, the fund may cancel the coverage or the commission may assess an administrative penalty not to exceed \$5,000. Each day of noncompliance constitutes a separate violation. Penalties collected under this section shall be deposited in the general revenue fund to the credit of the commission or reappropriated to the commission to offset the costs of implementing and administering this section.

(i) In assessing an administrative penalty, the commission may consider any matter that justice may require and shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
- (2) the history and extent of previous administrative violations;
- (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
- (4) any economic benefit resulting from the prohibited act; and
- (5) the penalty necessary to deter future violations.

(j) The procedures established under this section must be followed each year the policyholder meets the qualifications established under Subsection (c) of this section.

(k) The commission, the fund, or other professional source shall charge the policyholder for the reasonable cost of services provided under Subsections (e) and (f) of this section. The fees for those services shall be set at a cost-reimbursement level including a reasonable allocation of the administrative costs.

(l) The compliance and practices division of the commission shall enforce compliance with this section through the administrative violation proceedings under Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes).

Sec. 14. CONTROL OF FRAUD. (a) The fund shall develop and implement a program to identify and investigate fraud and violations of this code relating to workers' compensation insurance by an applicant, policyholder, claimant, agent, or

insurer. The fund shall contract with the commission to compile and maintain information necessary to detect practices or patterns of conduct that violate this code relating to workers' compensation insurance or the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).

(b) The fund shall refer all cases of suspected fraud and violations of this code relating to workers' compensation insurance to the commission to:

- (1) perform investigations;
- (2) conduct administrative violation proceedings; and
- (3) assess and collect penalties and restitution.

(c) The fund may enter into interdepartmental funding agreements with local prosecutors for the prosecution of offenses against the fund.

(d) Restitution collected under Subsection (b) of this section shall be deposited to the fund.

(e) Penalties collected under Subsection (b) of this section shall be deposited in the general revenue fund to the credit of the commission and shall be appropriated to the commission to offset the costs of this program.

(f) The board, fund, and employees of the fund are not liable in a civil action for any action made in good faith in the execution of duties under this section including the identification and referral of a person for investigation and prosecution for a possible administrative violation or criminal offense.

Sec. 15. INITIAL CAPITALIZATION AND COMMENCEMENT OF OPERATIONS. (a) The fund shall be initially capitalized by a temporary gross premium tax on all private workers' compensation carriers, except the fund, as provided by Article 5.76-4, Insurance Code.

(b) The proceeds collected shall be deposited in the state treasury in an account held for the fund. The treasurer shall hold the money in trust for the fund.

(c) The board of directors shall commence organizational efforts on January 1, 1992. From that day forward, the board of directors shall exercise control over the monies held in trust by the treasurer.

(d) The board of directors shall hire a manager by April 1, 1992.

(e) The board of directors shall adopt temporary bylaws by May 1, 1992.

(f) The manager shall hire sufficient personnel to begin prudent underwriting operations on July 1, 1992.

(g) The fund shall begin marketing efforts consistent with Section 10 of this Act by May 1, 1992.

(h) The fund shall begin underwriting operations on July 1, 1992. The board shall establish rules governing the amount of total premiums that may be written per quarter in 1992 and 1993. Thereafter, the fund will be required to maintain reserves consistent with Section 14 of this article, as well as Article 5.61 of this code.

Sec. 16. PAYMENT OF TAXES AND FEES; GUARANTY ASSOCIATION. (a) The fund shall pay the maintenance tax established under Article 5.68 of this code and Article 8308, Section 2.22, in the same manner as an insurance carrier authorized by the Texas Department of Insurance to write workers' compensation insurance in this state.

(b) The fund shall pay no other taxes and fees or any payments due in lieu of taxes, that are payable by another insurance carrier authorized and admitted by the Texas Department of Insurance to do insurance business in this state under a certificate of authority that includes authorization to write workers' compensation insurance.

(c) The fund may not be a member of nor be protected by the Texas Property and Casualty Insurance Guaranty Association and is not subject to assessment under the Texas Property and Casualty Insurance Guaranty Act (Article 21.28-C, Insurance Code).

Sec. 17. FINANCIAL ADMINISTRATION. (a) Revenues of the fund consist of:

(1) premiums paid by employers for workers' compensation insurance from the fund;

(2) investments and money earned from investments of the fund;

(3) money received from the temporary gross premium tax as provided by Article 5.76-4, Insurance Code; and

(4) any other money received by the fund.

(b) Administrative expenses of the fund shall be paid from the fund at the direction of the board.

(c) Money in the fund shall be paid from the fund, without legislative appropriation, on vouchers approved by the board. That money shall be held exclusively for the purposes stated in this article and may not be used or appropriated for any other purpose.

(d) Money in the fund shall be invested, subject to a policy approved by the state treasurer, in the types of investments authorized by law for investment of state funds as provided by Chapter 404, Government Code.

(e) The fund shall establish and maintain reserves for losses on an actuarially sound basis in accordance with Article 5.61 of this code.

(f) The fund must maintain a ratio of premiums on policies written to surplus of not more than three to one.

(g) The fund shall file annual statements with the Texas Department of Insurance and the commission in the same manner as required of other workers' compensation insurance carriers, and the State Board of Insurance shall include a report on the fund's condition in that board's annual report under Article 1.25 of this code.

Sec. 18. REPORT TO BOARD. The manager shall make periodic reports to the board with regard to the status of the fund and its investments.

Sec. 19. POLICY FORMS. The fund shall use the uniform policy and standard policy forms prescribed by the State Board of Insurance under Articles 5.56 and 5.57 of this code.

Sec. 20. CANCELLATION AND NONRENEWAL. The fund may cancel or refuse to renew coverage on a policyholder as provided in Section 3.28, Texas Workers' Compensation Act (Article 8308-3.28, Vernon's Texas Civil Statutes).

Sec. 21. ANNUAL REPORT; OTHER REPORTS. (a) Not later than the 30th day after the date on which the fund's fiscal year ends, the board shall publish a report analyzing the fund's activities and fiscal condition during the preceding fiscal year. The board shall have an independent audit made of each such report.

(b) The fund shall file with the State Board of Insurance and the commission all reports required of other workers' compensation insurers.

Sec. 22. EXAMINATION OF FUND. (a) The State Board of Insurance shall conduct an examination of the fund in the manner and under the conditions provided by Articles 1.15 through 1.19 of this code for the examination of insurance carriers.

(b) The board shall pay the costs of the examination from the fund.

(c) The fund is subject to all provisions of this code and to the jurisdiction of the commissioner of insurance and the State Board of Insurance in the same manner as private insurance carriers.

Sec. 23. ASSISTANCE FROM INSURANCE BOARD. On the request of the board, the Texas Department of Insurance shall provide technical assistance to the board and the manager as reasonably necessary to implement this article.

Sec. 24. FUND SOLVENCY. (a) In addition to other regulatory authority granted the commissioner of insurance, if the commissioner finds that the fund does not own assets at least equal to all liabilities and required reserves, together with the

minimum basic surplus required under this article, or that the condition of the fund is such that continuing operation of the fund is hazardous to the public or to the policyholders of the fund, the commissioner shall:

- (1) notify the manager and board of the finding; and
- (2) furnish the fund with a written list of the commissioner's recommendations to abate the problems.

(b) If the fund fails to comply with the recommendations of the commissioner not later than the 60th day after the date of the recommendations, the commissioner shall notify the governor, the lieutenant governor, and the speaker of the house of representatives of the recommendations with which the fund is not in compliance, together with solutions and estimations of all fiscal implications.

Sec. 25. APPLICABILITY OF OTHER STATUTES. (a) The fund is an insurance company for purposes of the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes).

(b) All regulatory authority granted the commissioner of insurance relating to a stock or mutual insurance company is applicable to the fund.

(c) Unless specifically defined as a state agency in a specific statute, the fund is not a state agency.

SECTION 14.02. Subchapter G, Chapter 5, Insurance Code, is amended by adding Article 5.76-4 to read as follows:

Article 5.76-4. TEMPORARY MAINTENANCE TAX SURCHARGE. (a) A temporary maintenance tax surcharge is assessed against:

- (1) each insurance company writing workers' compensation insurance in this state;
- (2) each certified self-insurer as provided in Chapter D, Article 3, Texas Workers' Compensation Act (Article 8308-3.51, et seq., Vernon's Texas Civil Statutes).

(b) The temporary maintenance tax surcharge shall be in effect for calendar years 1992 and 1993 only.

(c) The temporary maintenance tax surcharge shall be assessed and allocated for the purpose of initiation, financing, and capitalization of the Texas Workers' Compensation Insurance Fund.

(d) The temporary maintenance tax surcharge shall be one percent of the correctly reported gross premiums written by all authorized insurers, as well as self-insurers, writing or self-insuring workers' compensation insurance in this state.

SECTION 14.03. Subchapter D, Chapter 3, Insurance Code, is amended by adding Article 5.55D and Article 5.64A to read as follows:

Article 5.55D. REHABILITATION DISCOUNTS. The Board shall promulgate premium discount plans for employers who are certified participants in a commission-developed plan for the rehabilitation or retraining of injured workers or the reemployment of injured employees at light-duty jobs. In no event shall a premium discount under this article be allowed an employer with a debit modifier.

Article 5.64A. REQUIRED OFFER OF INSURANCE. (a) Any insurance company authorized to do business in this state shall offer workers' compensation insurance in this state if workers' compensation insurance is offered by that insurer in any other state or territory of the United States.

(b) Any failure to comply with this article can result in administrative penalties of up to \$50,000 and/or revocation of all licenses to transact business in this state, or both, as determined by the board.

SECTION 14.04. Subchapter D, Chapter 32, Penal Code, is amended by adding Section 32.54 to read as follows:

Sec. 32.54. PENALTY FOR FRAUDULENTLY OBTAINING WORKERS' COMPENSATION INSURANCE COVERAGE. (a) A person commits an offense if the person, with intent to obtain workers' compensation

insurance coverage for himself or another under the workers' compensation insurance laws of this state, knowingly or intentionally:

- (1) makes a false statement;
- (2) misrepresents or conceals a material fact; or
- (3) makes a false entry in, fabricates, alters, conceals, or destroys a document other than a governmental record.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) The court may order a person to pay restitution to an insurance company, the Texas workers' compensation insurance facility, or the Texas Workers' Compensation Insurance Fund if the person commits an offense under this section.

SECTION 14.05. Chapter 5, Insurance Code, is amended by adding Article 5.65C to read as follows:

Art. 5.65C. WRONGFUL ACTS; PENALTY. (a) A person commits an administrative violation if the person, to obtain workers' compensation insurance coverage for himself or another, intentionally or knowingly:

- (1) makes a false statement;
- (2) misrepresents or conceals a material fact;
- (3) makes a false entry in, fabricates, alters, conceals, or destroys a document; or
- (4) conspires to commit an act listed in Subdivision (1), (2), or (3) of this subsection.

(b) An administrative violation under Subsection (a) of this article is punishable by an administrative penalty not to exceed \$5,000 assessed in accordance with the procedures established for an administrative violation under Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes).

(c) The State Board of Insurance shall sanction an agent who commits an administrative violation under this article in accordance with Section 7, Article 1.10 of this code.

(d) If a policyholder commits an administrative violation under this article and obtains workers' compensation insurance coverage at a premium less than the premium that would have been charged had the policyholder not committed the administrative violation, the policyholder is liable to the insurer for the difference between the premium due and the premium actually charged, plus reasonable interest and reasonable attorney fees. For the purposes of this subsection, "insurer" includes the Texas workers' compensation insurance facility and the Texas Workers' Compensation Insurance Fund.

(e) An insurer commits an administrative violation if the insurer directly or indirectly requires a person to apply for or purchase a policy of insurance other than workers' compensation insurance as a condition attached to the issuance of a workers' compensation insurance policy by the insurer. An insurer that violates this subsection is subject to the administrative penalties under Article 1.10 of this code.

(f) A person commits an administrative violation if the person knowingly and intentionally obtains or maintains workers' compensation insurance coverage from an insurer that is not authorized to do business in this state or obtains or maintains alternative coverage from an insurer that is not authorized to do business in this state and is not a surplus lines insurer as provided by Article 1.14-2 of this code. An administrative violation under this subsection is punishable by an administrative penalty not to exceed \$5,000 assessed in accordance with the procedures established under Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes). Each day of noncompliance is a separate violation.

SECTION 14.06. Section 1.01, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 1.01. DEFINITIONS. In this article:

- (1) "Board" means the State Board of Insurance.
- (2) "Commission" means the Texas Workers' Compensation Commission.
- (3) "Compliance and practices division" means the division of compliance and practices of the commission.
- (4) "Credit risk" means a rejected risk who is unable to procure or retain insurance through ordinary methods in the voluntary market because the risk is in bankruptcy or is not creditworthy.
- (5) "Designated insurer" means any insurer authorized by the facility to issue small premium policies through the plan.
- (6)[(3)] "Facility" means the Texas workers' compensation insurance facility established under this article.
- (7)[(4)] "Fund" means the employers' rejected risk fund for providing workers' compensation insurance coverages for rejected risks.
- (8)[(5)] "Good faith" for the purposes of this article only means honesty in fact in any conduct or transaction.
- (9) "Health and safety division" means the division of workers' health and safety of the commission.
- (10)[(6)] "Insurance" means those types of insurance described in Section 2.05 of this article.
- (11)[(7)] "Insurer" means a stock company, mutual company, reciprocal, interinsurance exchange, the state fund, or Lloyd's association authorized to write workers' compensation insurance in this state.
- (12)[(8)] "Member" means an insurer that is a member of the facility.
- (13)[(9)] "Plan" means the small premium policy plan for providing workers' compensation insurance coverages for a small premium policy.
- (14)[(10)] "Rejected risk" means an employer, other than an employer [one] eligible for a small premium policy through the plan, that is in good faith entitled to insurance but is unable to procure or retain insurance through ordinary methods in the voluntary market. The term includes any and all legal entities that may be combined for experience rating purposes according to the rules of the board.
- (15)[(11)] "Servicing company" means a member of the facility or other eligible entity that is designated by the board to issue a policy that evidences the insurance coverages provided by the fund to a rejected risk and to service the risk as provided by this article.
- (16)[(12)] "Small premium policy" means a Texas standard workers' compensation insurance policy issued to an employer in this state for which the annual premium is less than \$5,000 and which is not expected to develop more than \$5,000 in premiums during the next 12 months. To be considered a small premium policy, a policy's governing classification must be in hazard group I, II, or III, as determined in retrospective rating plans approved in the State of Texas. An employer with a loss ratio in excess of 0.70 during each of the most recent three years for which data are available shall not be eligible for a small premium policy.
- (17) "State fund" means the Texas Workers' Compensation Insurance Fund.

SECTION 14.07. Subsections (b) and (c), Section 2.03, Article 5.76-2, Insurance Code, are amended to read as follows:

(b) The board shall appoint five voting members to represent members of the facility, and four voting members shall be appointed by the governor with the advice and consent of the senate to represent the general public. The nine voting members

serve staggered six-year terms. A person who is affiliated with a servicing company is not eligible for appointment to the governing committee.

(c) A person may not serve as a member of the governing committee representing the general public if the person, an individual related to the person within the second degree by consanguinity or affinity, or an individual residing in the same household with the person:

(1) is required to be registered or licensed under this code;
(2) is employed by or acts as a consultant to a person required to be registered or licensed under this code;
(3) owns, controls, has a financial interest in, or participates in the management of an organization required to be registered or licensed under this code;

(4) receives a substantial tangible benefit from the facility or the board;
(5) is an officer, employee, or consultant of an association in the field of insurance; or

(6) is required to register as a lobbyist under Chapter 305, Government Code.

(e) Subsection (d) of this section does not prohibit a person who is only a consumer of insurance or insurance products from serving as a member of the governing committee.

(f) A person who is ineligible to serve on the governing committee under Subsection (d) of this section may not serve as a member of the governing committee for one year after the date on which the condition making the person ineligible ends [nine voting members will be appointed by the board as follows:

{(1) six voting members shall represent workers' compensation insurance companies, of which no more than two are servicing companies, initially appointed by the board as follows: two members for a two year term; two members for a four year term; and two members for a six year term. At the expiration of the appointed terms, two members shall be appointed every two years by the board for six year terms. No member shall serve more than one six year term; and

{(2) three voting members shall include one representative of labor, one representative of business, and one representative of the public, initially appointed by the board as follows: the labor representative for a two year term; the business representative for a four year term; and the public representative for a six year term. At the expiration of the initial terms of appointment, one representative shall be appointed every two years for a six year term. No representative shall serve more than one six year term}.

(g)[(c)](1) The nonvoting, ex officio members shall be the representative of the Texas Workers' Compensation Commission and the public counsel appointed under Article 1.35A of this code [of the State Board of Insurance].

(2) The ex officio, nonvoting members shall not be considered in determining a quorum of the governing committee.

(h)[(3)] The duties and responsibilities of the members shall be provided in the bylaws, rules, and regulations of the facility adopted by the membership of the facility and approved by the board as provided by Section 2.04 of this article.

SECTION 14.08. Section 2.05, Article 5.76-2, Insurance Code, is amended by adding Subsections (c) through (l) to read as follows:

(c) The facility shall develop and implement a program to identify and investigate fraud and violations of this code relating to workers' compensation insurance by an applicant, policyholder, claimant, agent, or insurer. The facility shall contract with the commission to:

(1) compile and maintain data to detect practices or patterns of conduct that violate this code relating to workers' compensation insurance or the Texas Workers' Compensation Act (Article 8308-1.01 et seq., Vernon's Texas Civil Statutes); and

(2) conduct semiannual performance reviews of its servicing carriers.
(d) The facility shall refer all cases of suspected fraud and violations of this code relating to workers' compensation insurance to the commission to:

- (1) perform investigations;
- (2) conduct administrative violation proceedings; and
- (3) assess and collect penalties and restitution.

(e) The facility may enter into interdepartmental funding agreements with local prosecutors for the prosecution of offenses against the facility.

(f) Restitution collected under Subsection (d) of this section shall be deposited in the rejected risk fund.

(g) Penalties collected under Subsection (d) of this section shall be deposited in the general revenue fund to the credit of the commission and shall be appropriated to the commission to offset the costs of this program.

(h) The governing committee, facility, and employees of the facility are not liable in a civil action for any action made in good faith in the execution of duties under this section, including the identification and referral of a person for investigation and prosecution for a possible administrative violation or criminal offense.

(i) The facility may not indemnify the servicing companies.

(j) Unless the attorney general provides prior approval for the facility to obtain outside counsel, the attorney general shall:

- (1) represent the facility in actions to collect debts or assessments;
- (2) review and advise the facility on contracts and approve contracts between the facility and servicing companies; and
- (3) provide other legal assistance to the facility.

(k) Subsection (j) of this section does not prohibit the servicing companies from obtaining legal counsel in relation to claims handling.

(l) The facility shall pay the attorney general for the reasonable costs of providing legal assistance under Subsection (j) of this section.

SECTION 14.09. Section 2.07, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 2.07. INVESTMENTS. (a) Funds in the facility are outside the state treasury.

(b) The facility shall invest its funds only in investments authorized by law for the investment of state funds as provided in Chapter 404, Government Code. The governing committee shall develop an investment policy and submit the policy to the state treasurer for review and approval [interest-bearing time deposits or certificates of deposit in any bank or banks doing business in the State of Texas which are members of the Federal Deposit Insurance Corporation, treasury bills, notes, or any other treasury obligations of the United States of America or in any other investments as may be proposed by the governing committee and approved by the board].

SECTION 14.10. Section 4.02, Article 5.76-2, Insurance Code, is amended by adding Subsections (c), (d), and (e) to read as follows:

(c) The facility may permit a premium to be paid in installments as provided in rules adopted by the board. The facility shall charge interest at eight percent per year on premiums paid in installments.

(d) The facility may refuse to write insurance coverage on an applicant that is a credit risk if the applicant does not:

- (1) pay the total estimated premium and other charges before the policy is issued; or
- (2) provide security for payment of the total estimated premium and other charges before the policy is issued.

(e) The facility may not issue a policy to a debtor in possession unless the applicant pays the total estimated premium and other charges before the policy is issued.

SECTION 14.11. Section 4.04, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 4.04. FACILITY DEFICITS. (a) Not later than June 1 of each year, the facility shall report its operating results to the board.

(b) The facility shall calculate at least annually its results for incurred losses, including incurred but not reported losses, by accident year. If there is a deficit or surplus from operations for an accident year, the amount of the deficit or surplus shall be assessed or rebated to the insurance carriers licensed in this state who were members of the facility during the calendar year. Each insurance carrier shall pay a proportion of the total assessment or receive a proportion of the total rebate based on its proportion of the total voluntary and facility workers' compensation insurance writings during the calendar year. The board may provide by rule for the redistribution of all or part of an assessment that would otherwise be levied on an insurance carrier if the insurance carrier is unable to pay the full assessment because the carrier is in liquidation at the time of the assessment. The state fund is not liable for any deficits incurred.

(c) For assessments or rebates made under Subsection (b) of this section, the board shall establish an appropriate pass-through allowance so that each retrospectively rated risk written during the calendar year shall pay a proportion of the assessment or receive a proportion of the rebate. The pass-through allowance shall be based on the premium paid by the retrospectively rated risk as a proportion of the total voluntary and facility writings by the insurance carrier in the calendar year.

(d) By rule, the board may authorize the deferment of the payment of an assessment made under Subsection (b) of this section. Deferments may only be allowed if the cash flow of the facility is adequate to meet all needs.

(e) A deferment of an assessment under Subsection (b) of this section shall earn interest payable to the facility at a rate annually determined by the board based on the auction rate quoted on a discount basis for the 52-week treasury bills issued by the United States government, as published by the Federal Reserve Board on the date nearest to the date on which the interest rate is determined. [The facility shall annually report its operating results to the board. In the event there is a deficit from operations, the amount of such deficit shall be assessed on the members based on the proportion to the amount that a member company's voluntary workers' compensation insurance writings bear to the total voluntary workers' compensation insurance writings in this state for the preceding calendar year.]

[(b) The board may by rule provide for a maximum annual assessment for the facility deficit assessed against a member company under Subsection (a) of this section and may provide that the payment of any portion of the assessment not met because of such maximum is deferred from year to year.]

[(c) The rules shall require consideration of the financial stability of the fund and the member company when setting a maximum and allowing deferments under Subsection (b) of this section].

[(f)] [(d)] A designated insurer may not cede more than 50 percent of its total writings of premium from risks eligible for a small premium policy. One-half of that portion of written premiums from risks eligible for small premium policies which is not ceded to the reinsurance account shall be removed from a member company's voluntary writings when calculating the assessment ratio of that member company as set out in Subsection (b) [Subsection (a)] of this section.

[(g) [(e)] Commencing January 1, 1992, if a [every] member insurer [which] elects to defer any portion of an assessed deficit as provided herein, [must show] the

entire unpaid, assessed portion thereof and accrued interest, if any, must be shown as a liability on all of its financial and annual statements.

SECTION 14.12. Section 4.05, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 4.05. FUND RATES. (a) The board, in addition to the provisions prescribed by Subchapter D, Chapter 5, Insurance Code, is authorized and directed to determine, fix, prescribe, promulgate, change, or amend endorsements, rates, rating plans, or minimum premiums normally applicable to a risk so as to apply to any and every rejected risk assigned by the facility such endorsements, rates, rating plans, and minimum premiums as are commensurate with the greater hazard of the rejected risk, considering in connection therewith the experience and physical, financial, and other conditions of such risk.

(b) Not later than the 30th day after the effective date of this subsection and annually thereafter, the governing committee shall engage the services of an independent actuary who is a member in good standing with the Casualty Actuarial Society or the American Academy of Actuaries to estimate the deficit for the next accident year. If the expected deficit for accident year 1992 is greater than six percent of the workers' compensation insurance premiums expected to be written in the voluntary market, the board shall promulgate premium rating plans to reduce the deficit to not more than six percent. If the expected deficit for accident year 1993 is greater than three percent of the workers' compensation insurance premiums expected to be written in the voluntary market, the board shall promulgate premium rating plans to reduce the deficit to not more than three percent. Thereafter, if the expected deficit is greater than two percent of the workers' compensation insurance premiums expected to be written in the voluntary market, the board shall promulgate premium rating plans to reduce the deficit to not more than two percent. The rating plans must be predicated on individual risk characteristics, including but not limited to the use of tabular surcharges. The governing committee shall submit the rating plans to the board for review and approval not later than November 30 of each year. The facility may not write a policy below manual rates set by the board.

(c) In developing and implementing a rating plan under Subsection (b) of this section, the board shall consider as an extraordinary risk an employer whose actual incurred losses exceed the employer's expected losses in two of the three most recent policy years for which information is available and shall give due consideration to an appropriate allowance for the greater risk. In this subsection:

(1) "actual incurred losses" are those shown in column 5 of the employer's experience rating form as prepared by the board according to the Texas Experience Rating Plan for Workers' Compensation Insurance; and

(2) "expected losses" are those shown in column 11 of the employer's experience rating form as prepared by the board according to the Texas Experience Rating Plan for Workers' Compensation Insurance.

(d) The facility shall create a procedure to review, on request of an employer, the application of the rating plan to an employer identified as an extraordinary risk under Subsection (c) of this section. The facility may exclude the employer from the extraordinary risk provisions of the rating plan if:

(1) the facility determines that the employer's actual incurred losses exceeded expected losses due to injuries resulting from acts of God or actions of third parties unrelated to the workplace; or

(2) the employer has:

(A) had a material change in ownership of the employer's business;

(B) had a substantial change in the type of business enterprise in which the employer is engaged;

(C) implemented a safety and accident prevention program approved by the health and safety division; or

(D) had excess losses resulting from a single incident involving multiple claims.

(e) In promulgating a rate or rates for rejected risks assigned by the facility, the board shall give due consideration to an appropriate allowance for the greater hazard of the risks' losses, claims expense, audit expenses, premium taxes, maintenance taxes, general administration expense, agent's commissions, other acquisition expense, inspection expense, an allowance for profit or contingencies, and any other relevant facts in connection with insuring and servicing such rejected risks.

(g) [(f)] The board shall establish a surcharge program for risks insured by the employers' rejected risk fund for the purposes of encouraging safety and funding any deficit caused by excessive losses. The surcharge program shall include provisions that if an individual insured's actual losses are equal to or less than the insured's modified expected losses, as determined under the Texas workers' compensation experience rating plan, then there is to be no surcharge. The maximum surcharge shall be 100 percent of standard premiums and shall be related to the difference between each insured's actual losses and its modified expected losses.

(h) [(d)] The board shall promulgate a special form of all states endorsement, in keeping with the purposes of this article, which may be used in connection with any risk insured by the employers' rejected risk fund, and shall establish premiums for the use of such endorsement.

~~[(e) The board may establish a separate rating plan for those employers who apply for workers' compensation insurance in the facility and are either certified self insurers or members of a certified self insurer group.]~~

SECTION 14.13. Section 4.06, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 4.06. INJURY PREVENTION REQUIREMENTS. (a) The facility or any of its servicing companies ~~[members]~~ may make and enforce ~~[reasonable]~~ rules for the prevention of injuries to employees of its policyholders or applicants for insurance under this article. For this purpose, representatives of the facility, any of its members, representatives of the commission, or representatives of the board on reasonable notice shall be granted free access to the premises of each such policyholder or applicant during regular working hours.

(b) Failure or refusal by any such policyholder or applicant to comply with any ~~[reasonable]~~ rule prescribed by the facility for the prevention of injuries or failure or refusal to make full disclosure of all information pertinent to the insuring or servicing of the policyholder or applicant shall be sufficient grounds for the facility to cancel a policy or deny an application for insurance.

(c) The health and safety division shall develop a program targeting a policyholder in the facility under the employers' rejected risk fund.

(d) A policyholder in the facility who is insured under the rejected risk fund shall obtain a safety consultation if the employer:

(1) has an experience modifier greater than 1.25;

(2) does not have an experience modifier but has had a loss ratio greater than 0.70 in at least two of the three most recent policy years for which information is available; or

(3) has not been in business three years and meets criteria established by the commission, which may include the number and classification of employees, the policyholder's industry, and previous workers' compensation experience in this state or another jurisdiction.

(e) The employer shall obtain the safety consultation not later than the 30th day after the effective date of the policy and shall obtain the consultation from the

health and safety division of the commission, the policyholder's servicing company, or another professional source approved for that purpose by the health and safety division of the commission. The safety consultant shall file a written report with the commission and the policyholder that sets out any hazardous conditions or practices identified by the safety consultation.

(f) The policyholder and the consultant shall develop a specific accident prevention plan that addresses the hazards identified by the consultant. The policyholder shall comply with the accident prevention plan.

(g) The health and safety division may investigate accidents occurring at the work sites of a policyholder for whom a plan has been developed under Subsection (f) of this section, and the division otherwise may monitor the implementation of the accident prevention plan as it finds necessary.

(h) In accordance with rules adopted by the commission, not earlier than 90 days or later than six months after the development of an accident prevention plan under Subsection (f) of this section, the health and safety division shall conduct a follow-up inspection of the policyholder's premises. The commission may require the participation of the safety consultant who performed the initial consultation and developed the safety plan. If the division determines that the policyholder has complied with the terms of the accident prevention plan or has implemented other acceptable corrective measures, the division shall so certify. If a policyholder fails or refuses to implement the accident prevention plan or other suitable hazard abatement measures, the facility may cancel the coverage or the commission may assess an administrative penalty not to exceed \$5,000. Each day of noncompliance constitutes a separate violation. Penalties collected under this section shall be deposited in the General Revenue Fund to the credit of the commission or reappropriated to the commission to offset the costs of implementing and administering this section.

(i) In assessing an administrative penalty, the commission may consider any matter that justice may require and shall consider:

- (1) the seriousness of the violation, including the nature, circumstances, consequences, extent, and gravity of the prohibited act;
- (2) the history and extent of previous administrative violations;
- (3) the demonstrated good faith of the violator, including actions taken to rectify the consequences of the prohibited act;
- (4) any economic benefit resulting from the prohibited act; and
- (5) the penalty necessary to deter future violations.

(j) The procedures established in this section must be followed each year the policyholder meets the qualifications established in Subsection (d) of this section and is insured through the facility under the employers' rejected risk fund.

(k) The commission shall charge the policyholder for the reasonable cost of services provided under Subsections (c) through (i) of this section. The fees for those services shall be set at a cost-reimbursement level, including a reasonable allocation of the commission's administrative costs.

(l) The compliance and practices division shall enforce compliance with this section through the administrative violation proceedings established under Article 10, Texas Workers' Compensation Act (Article 8308-10.01 et seq., Vernon's Texas Civil Statutes).

SECTION 14.14. Section 5.01, Article 5.76-2, Insurance Code, is amended to read as follows:

Sec. 5.01. MARKET ASSISTANCE PROGRAM. (a) The board shall establish a voluntary market assistance program to reduce ~~[monitor the operation of the fund with the object of reducing]~~ the number of risks insured by the employers' rejected risk fund. Pursuant to such program each rejected risk ~~[meeting qualifications set forth by the board and making a request]~~ shall be reviewed before

[or after] its assignment under Section 4.02 of this article. The market assistance program shall attempt to find an insurer to [voluntarily] insure the risk in the voluntary market before its initial assignment to the employers' rejected risk fund, assignment to a specific company under Section 4.02 of this article, or renewal of the risk's assignment to the employers' rejected risk fund. The board shall adopt rules as necessary to implement this section. A licensed local recording agent need not be appointed by an insurer willing to accept business offered by the agent for review by the market assistance program. The market assistance program may establish reasonable fees for market assistance review, and those fees are dedicated to the facility [board] for the administration of this section.

(b) Each member of the facility shall file all information prescribed by the board with the market assistance program.

(c) A member of the facility that fails or refuses to file the information required in Subsection (b) of this section commits an administrative violation punishable by an administrative penalty not to exceed \$5,000 assessed under Section 7, Article 1.10 of this code.

SECTION 14.15. Amend Article 8308 by adding Section 3.00 to read as follows:

SECTION 3.00. SCOPE OF WORKERS' COMPENSATION LAWS. The workers' compensation laws of this state govern the relationships between all employers and employees in this state with respect to injuries suffered in the course and scope of employment. The relationship between employers who elect not to purchase workers' compensation insurance and their employees injured in the course and scope of employment is governed by Section 3.03, 3.04 and 3.23 of this Act.

SECTION 14.16. Article 8308, Section 3.03, is amended to read as follows:

SECTION 3.03. COMMON-LAW DEFENSES. (a) It is the policy of the State of Texas that an employee, injured on the job should have one of two remedies. Both of these remedies are considered as part of the workers' compensation scheme of the State of Texas.

(b) If an employee is injured while working for an employer with workers' compensation insurance, he must proceed under the terms of this Act.

(c) If an employee is injured while working for an employer who does not have workers' compensation coverage, the employee shall have the right to pursue a negligence action against his employer, regardless if that employer has a plan set forth in ERISA, 29 U.S.C. Section 1000, et. seq.

(a)(d) In an action against an employer who does not have workers' compensation insurance coverage to recover damages for personal injuries or death sustained by an employee in the course and scope of the employment, it is not a defense that:

- (1) the employee was guilty of contributory negligence;
- (2) the employee assumed the risk of injury or death; or
- (3) the injury or death was caused by the negligence of a fellow

employee.

(b)(e) This section does not reinstate or otherwise affect the availability of these or other defenses at common law.

(c)(f) The employer may defend the action on the ground that the injury was caused by an intentional act of the employee to bring about the injury or while the employee was in a state of intoxication.

SECTION 14.17. Article 8308, Section 3.04, is amended by striking the entire section and substituting the following:

SECTION 3.04. BURDEN OF PROOF. (a) Prior to July 1, 1992, in all such actions against an employer who does not have workers' compensation insurance, and after July 1, 1992, in actions against employers not required to maintain

coverage under Section 3.23 of this Act, it shall be necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.

(b) After July 1, 1992, in all such actions against an employer who is required to have coverage but who does not have workers' compensation insurance, it shall not be necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment. Instead, an employee shall be required to prove only that the injury occurred in the course and scope of employment. [In all such actions against an employer who does not have workers' compensation insurance coverage, it is necessary to a recovery for the plaintiff to prove negligence of the employer or some agent or servant of the employer acting within the general scope of his employment.]

SECTION 14.18. Article 8308, Section 3.23, is amended by striking the entire section and substituting the following:

SECTION 3.23. OBTAINING COVERAGE. (a) Workers' compensation insurance coverage for each employee who is not exempt from coverage under this Act shall be obtained and maintained after July 30, 1992, by employers who employ in this state 150 or more employees not exempt from coverage under this Act. Before that date, except for employers otherwise required by law to obtain coverage, an employer may elect to obtain workers' compensation insurance coverage. An employer may obtain the coverage through a licensed insurance company; after December 31, 1992, through self-insurance as provided by Chapter D of this article; or, after June 30, 1992, through the Texas Workers' Compensation Fund established by Article 5.76-3 of the Insurance Code. An employer who obtains coverage is subject to this Act.

(b) After June 30, 1992, all employers not required by law to obtain coverage who employ in this state more than two employees not exempt from coverage under this Act, and who do not elect to obtain workers' compensation insurance coverage, shall obtain and maintain a policy or policies of health and wage continuation insurance for each non-exempt employee.

Such policies shall at a minimum provide for one year coverage of full reasonable and necessary medical benefits, from the date of injury, regardless of the cause of injury, or illness. Such policy must include wage continuation, at 80 percent of the pre-disability wage, for a period of at least six months, regardless of the cause of injury or illness. Such policies must be approved by the commission.

In the event that the employment of an employee covered by such a policy or policies is terminated, for any reason other than the employee's voluntary resignation, after sustaining an injury for which benefits may be payable under this section, the employer shall continue to maintain the applicable policy or policies of insurance for a period of not less than one year from the date of termination.

Providing coverage pursuant to this subsection shall not give the employer any immunity from a common law cause of action for negligence and all provisions of this Act, including but not limited to Sections 3.03 and 3.04, are applicable to such actions. It is the express intent of the State of Texas that such actions, including those involving employers under this subsection, are a part of the workers' compensation system of the State of Texas.

(c) After June 30, 1992, an employer in the building or construction industry, whether a general contractor or a subcontractor, shall obtain workers' compensation insurance coverage for all employees of that employer as provided by this section.

(d) In every building or construction contract, the proprietary entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the project. A subcontractor on the project must provide such a certificate to the

general contractor relating to the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the entity.

(c) After June 30, 1992, a person who offers or attempts to procure for employers the services of common workers, whether or not for compensation, shall obtain workers' compensation insurance coverage for the person's employees and for each common worker whose services the person procures for an employer. This subsection does not apply to a person who operates a labor bureau or employment office in conjunction with the person's own business for the exclusive purpose of employing individuals in that business and who:

(1) pays federal social security taxes, makes state and federal unemployment compensation insurance contributions, carries workers' compensation insurance coverage, and posts notice of that coverage in a conspicuous place on its premises indicating the coverage provided, the insurance carrier writing the coverage, and the expiration date of those insurance policies;

(2) provides workers with complete information and maintains a record of the information for at least two years, relating to work assignments, rates of pay, hours of work, and the nature and duration of the work;

(3) pays wages in a timely manner for all hours worked, less only deductions required or authorized by law, by negotiable check or cash, obtaining a receipt;

(4) provides, for each pay period, each worker with an itemized statement of gross earnings, any advances on earnings, required deductions, and net earnings, irrespective of the form of wage payment;

(5) provides for payment of wages to a worker by personal delivery, mail, or as otherwise requested by the worker, but not by delivery to or with the requirement that a worker's check be cashed by an entity owned or controlled by the person or in which the person has a significant financial interest, or by or at any other specific place designated by the person;

(6) pays workers reporting to assigned work a minimum of four hours' wages if the work is begun or two hours' wages if the work is not begun;

(7) pays workers for work performed whether or not the person is paid by the person's clients;

(8) provides that if transportation or other accommodations are provided to workers the workers are not obligated to use them, either by contract or as an express or implied condition of employment;

(9) provides overall supervision, direction, and control of the workers, including the right to hire, offer work assignments, administer discipline, and terminate employment;

(10) may provide direct on-the-job supervision of the workers to the extent of directing both what is to be done and the details of how it should be done; and

(11) accepts full responsibility for the actions of workers while performing the work and carries general liability and property damage insurance to discharge that responsibility.

(f) In this section "building or construction industry" includes:

(1) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;

(2) remodeling, extending, repairing, or demolishing a structure; or

(3) otherwise improving real property or appurtenances to real property through similar activities.

(g) For the purposes of this section, the employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in the building or construction industry.

(h) An employer subject to this article commits an offense if the employer fails to obtain workers' compensation insurance coverage as required by this article. A person who violates the rules under this section commits a Class B administrative violation. Each day of noncompliance is a separate administrative violation.

~~[(a) Except for public employers and as otherwise provided by law, an employer may elect to obtain workers' compensation insurance coverage. An employer may obtain coverage through a licensed insurance company or through self insurance as provided by this Act. An employer who obtains coverage is subject to the provisions of this Act.~~

~~(b) A general contractor or hiring contractor by written contract may assume responsibility for securing workers' compensation insurance coverage for a subcontractor or the employees of a subcontractor pursuant to Section 3.05 or 3.06 of this Act.~~

~~(c) In a building or construction contract entered into by this state or a political subdivision of this state, including a municipality, the governmental entity shall require the contractor to certify in writing that the contractor provides workers' compensation insurance coverage for all employees of the contractor employed on the public project. A subcontractor on the project must provide such a certificate to the general contractor relating the coverage of the employees of the subcontractor. The general contractor shall provide the certificate of a subcontractor to the governmental entity. A contractor who has a contract that requires workers' compensation insurance coverage may provide the coverage through a group plan or other method satisfactory to the governing body of the governmental entity.~~

~~(d)(1) In this section "building or construction" includes:~~

~~(A) erecting or preparing to erect structures, including buildings, bridges, roadways, public utility facilities, or related appurtenances;~~
~~(B) remodeling, extending, repairing, or demolishing a structure; or~~

~~(C) otherwise improving real property or appurtenances to real property through similar activities.~~

~~(2) The employment of maintenance employees by an employer who is not engaging in building or construction as the employer's primary business purpose does not constitute engaging in building or construction.]~~

SECTION 14.19. Article 8308, Section 3.22(a) is amended to read as follows:

SECTION 3.22 EMPLOYER FILING REQUIRED. (a) An employer not required to obtain coverage under Section 3.23 of this Act, who does not obtain coverage must notify the commission in writing, in the time and as prescribed by commission rule, that the employer does not elect to obtain coverage. The commission shall prescribe forms to be used for the employer notification and shall require the employer to provide reasonable information to the commission about the employer's business. The commission may contract with the Texas Employment Commission or the comptroller of public accounts for assistance in collecting the notification required under this section. These agencies shall cooperate with the commission in enforcing this section.

SECTION 14.20. REPEALER. Part 3, Article 5.76-2, Insurance Code, is repealed effective January 1, 1993.

SECTION 14.21. TRANSITION. (a) The governing committee of the Texas workers' compensation insurance facility, as that committee existed on November 30, 1991, is abolished December 1, 1991. In making appointments to the committee as created under Section 2.03, Article 5.76-2, Insurance Code, as amended by this Act:

(1) the State Board of Insurance shall appoint:

(A) two members for terms expiring February 1, 1993;

and (B) two members for terms expiring February 1, 1995;
 and (C) one member for a term expiring February 1, 1997;
 and (2) the governor shall appoint:
 (A) one member for a term expiring February 1, 1993;
 (B) one member for a term expiring February 1, 1995;

and (C) two members for terms expiring February 1, 1997.
 (b) In making appointments to the board of directors of the Texas Workers' Compensation Insurance Fund, the governor shall designate:

- (1) one member for a term expiring February 1, 1993;
- (2) one member for a term expiring each February 1, through 1997.

SECTION 14.22. INITIAL APPROPRIATION TO THE TEXAS WORKERS' COMPENSATION INSURANCE FUND. The comptroller of public accounts shall transfer from the State Board of Insurance operating fund to the general revenue fund an amount equal to \$5 million. The amount transferred is appropriated to the Texas Workers' Compensation Insurance Fund.

SECTION 14.23. INITIAL CONTRACTS BETWEEN THE TEXAS WORKERS' COMPENSATION INSURANCE FACILITY AND THE TEXAS WORKERS' COMPENSATION COMMISSION. (a) The initial contract between the Texas workers' compensation insurance facility and the Texas Workers' Compensation Commission required under Subsection (c), Section 2.05, Article 5.76-2, Insurance Code, as amended by this article, shall be in an amount that is at least:

- (1) \$40,452 for calendar year 1991;
- (2) \$114,357 for calendar year 1992; and
- (3) \$114,357 for calendar year 1993.

(b) The Legislative Budget Board shall review the continuing need for the Texas workers' compensation insurance facility's contracts with the Texas Workers' Compensation Commission under Subsection (a) of this section and may make reasonable adjustments to the amounts established in this section.

ARTICLE 15. EFFECTIVE DATE; EMERGENCY

SECTION 15.01. EFFECTIVE DATE.

SECTION 15.02. EMERGENCY. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

Question—Shall the motion to instruct the Conference Committee on H.B. 6 be adopted?

(Senator Truan occupied the Chair during discussion of the Motion in Writing on H.B. 6)

(Senator Armbrister in Chair)

(Senator Ellis in Chair)

(Senator Armbrister in Chair)

(Senator Ellis in Chair)

Question—Shall the motion to instruct the Conference Committee on H.B. 6 be adopted?

Senator Parker moved that the Senate stand adjourned until 11:00 a.m. Friday, August 9, 1991.

(President in Chair)

Senator Ellis moved that the Senate stand recessed until 11:00 a.m. tomorrow.

Question recurring on the motion to adjourn until 11:00 a.m. Friday, August 9, 1991, the motion was lost by the following vote: Yeas 1, Nays 24.

Yeas: Parker.

Nays: Armbrister, Barrientos, Bivins, Brooks, Brown, Carriker, Dickson, Ellis, Glasgow, Green, Haley, Harris of Tarrant, Krier, Lucio, Lyon, Moncrief, Ratliff, Rosson, Sims, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Absent: Harris of Dallas, Henderson, Johnson, Leedom, Montford, Sibley.

On motion of Senator Ellis and by unanimous consent, the motion to recess was withdrawn.

Question recurring on the adoption of the motion to instruct the Conference Committee on **H.B. 6**, the motion was lost by the following vote: Yeas 12, Nays 16.

Yeas: Barrientos, Carriker, Dickson, Ellis, Green, Haley, Johnson, Lyon, Parker, Rosson, Truan, Whitmire.

Nays: Armbrister, Bivins, Brooks, Brown, Glasgow, Harris of Tarrant, Krier, Lucio, Moncrief, Montford, Ratliff, Sibley, Sims, Tejeda, Turner, Zaffirini.

Absent: Harris of Dallas, Henderson, Leedom.

Accordingly, the President announced the appointment of the following conferees on the part of the Senate on the bill: Senators Harris of Dallas, Chair; Parker, Glasgow, Whitmire, Lucio.

SENATE CONCURRENT RESOLUTION 20

Senator Barrientos offered the following resolution:

WHEREAS, The legislature may pass **H.B. 7**, Acts of the 72nd Legislature, 1st Called Session, 1991, creating a five-member task force to be appointed by the governor to study and make recommendations on the possible closure or consolidation of facilities of the Texas Department of Mental Health and Mental Retardation; and

WHEREAS, The governor's office will provide staff and funding for the task force, and the governor will have 20 days following the recommendations of the task force to accept or reject its findings; and

WHEREAS, The findings of the task force are of paramount importance to the people of Texas, the quality and availability of mental health and mental retardation services to those who need them, the people who work in the facilities of the department, and the communities in which the facilities are located; and

WHEREAS, The perception of an objective study would be enhanced by the appointment by the governor of task force members who are recommended independently; now, therefore, be it

RESOLVED by the 72nd Legislature of the State of Texas, 1st Called Session, That the governor is requested by this resolution to appoint task force members from a list of qualified individuals submitted to the governor by the lieutenant governor and the speaker of the house of representatives.

The resolution was read.

On motion of Senator Barrientos and by unanimous consent, the resolution was considered immediately and was adopted by a viva voce vote.

MESSAGE FROM THE GOVERNOR

The following Message from the Governor was read and was filed with the Secretary of the Senate:

Austin, Texas
August 7, 1991

P R O C L A M A T I O N
BY THE
GOVERNOR OF THE STATE OF TEXAS
41-2493

TO ALL TO WHOM THESE PRESENTS SHALL COME:

TO THE MEMBERS OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE SEVENTY-SECOND TEXAS LEGISLATURE IN FIRST CALLED SESSION:

Pursuant to Article III, Section 40, and Article IV, Section 8 of the Texas Constitution, I, Ann W. Richards, Governor of Texas, do hereby submit the following matter for consideration by the Seventy-second Texas Legislature in its First Called Session:

Legislation providing for bonds and tax incentives for the possible location of a significant new aircraft manufacturing facility in Texas.

The Secretary of State shall take notice of this action and notify the Legislature.

IN TESTIMONY WHEREOF, I have hereunto signed my name officially and caused the seal of the State to be affixed hereto at Austin, this 6th day of August, 1991.

/s/Ann W. Richards
Governor of Texas

Attest:

/s/John Hannah, Jr.
Secretary of State

SENATE RULE 11.11 SUSPENDED

On motion of Senator Haley and by unanimous consent, Senate Rule 11.11 was suspended in order that the Committee on Administration might consider **S.B. 100** tomorrow.

SENATE RULE 11.11 SUSPENDED

Senator Haley moved to suspend Senate Rule 11.11 in order that the Committee on Administration might consider **S.C.R. 18** tomorrow.

The motion to suspend Senate Rule 11.11 was adopted by the following vote: Yeas 20, Nays 9.

Yeas: Armbrister, Barrientos, Brooks, Carriker, Dickson, Ellis, Green, Haley, Johnson, Lucio, Lyon, Moncrief, Montford, Parker, Rosson, Tejeda, Truan, Turner, Whitmire, Zaffirini.

Nays: Bivins, Brown, Glasgow, Harris of Tarrant, Harris of Dallas, Krier, Ratliff, Sibley, Sims.

Absent: Henderson, Leedom.

RECESS

On motion of Senator Brooks, the Senate at 3:05 p.m. took recess until 5:00 p.m. today.

AFTER RECESS

The Senate met at 5:00 p.m. and was called to order by Senator Brooks.

**CONFERENCE COMMITTEE REPORT
ON HOUSE JOINT RESOLUTION 10**

Senator Green submitted the following Conference Committee Report:

Austin, Texas
August 7, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **H.J.R. 10** have met and had the same under consideration, and beg to report it back with the recommendation that it do pass.

GREEN
GLASGOW
HALEY
ZAFFIRINI

CAIN
BLACK
EDWARDS
PIERCE
TAYLOR

On the part of the Senate

On the part of the House

The Conference Committee Report was read and was filed with the Secretary of the Senate.

RECESS

On motion of Senator Sibley, the Senate at 5:02 p.m. took recess until 8:00 a.m. tomorrow.

EIGHTEENTH DAY
(Continued)
(Thursday, August 8, 1991)

AFTER RECESS

The Senate met at 8:00 a.m. and was called to order by Senator Zaffirini.

MESSAGE FROM THE HOUSE

House Chamber
August 8, 1991

HONORABLE BOB BULLOCK
PRESIDENT OF THE SENATE

SIR: I am directed by the House to inform the Senate that the House has passed the following:

H.B. 71, Relating to the apportionment of the state into congressional districts.

S.C.R. 20, Requesting the governor to appoint a task force to study and make recommendations on the possible closure or consolidation of facilities of the Texas Department of Mental Health and Mental Retardation.

H.B. 19, Relating to the terms served by members of the Agricultural Diversification Board, the execution of the Texas Link Deposit Program, the amount of funds that may be placed in the Texas Link Deposit Program, and the purposes for which loans made under that program may be used.

H.B. 22, Relating to the declaration of an LP gas emergency temporarily suspending certain transportation requirements.

H.B. 55, Relating to the State Preservation Board.

H.B. 72, Relating to the apportionment of the state into State Board of Education districts.

H.B. 81, Relating to terms of the board of directors and debts of the Ector County Hospital District.

H.B. 124, Relating to the disposition of the Morris County Hospital District's assets and liabilities on dissolution.

H.B. 190, Relating to the establishment of a task force to study cost control, efficiency, and the operation of state agencies.

Respectfully submitted,

BETTY MURRAY, Chief Clerk
House of Representatives

HOUSE BILL ON FIRST READING

The following bill received from the House was read the first time and referred to the Committee indicated:

H.B. 124, To Committee on Administration.

CONFERENCE COMMITTEE REPORT ON SENATE BILL 3

Senator Montford submitted the following Conference Committee Report:

Austin, Texas
August 8, 1991

Honorable Bob Bullock
President of the Senate

Honorable Gibson D. "Gib" Lewis
Speaker of the House of Representatives

Sir:

We, your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on **S.B. 3** have met and had the same

under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

MONTFORD
BARRIENTOS
ELLIS

On the part of the Senate

RUDD
WILLIAMSON
BLACKWOOD
On the part of the House

A BILL TO BE ENTITLED
AN ACT

relating to state and local government finances and the cost-effective delivery of governmental services, including the administration, management, use, payment, expenditure, transfer, receipt, and collection of certain state and local revenue, and the authority of certain state agencies to issue bonds and make certain expenditures.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1

SECTION 1.01. Section 57(a), Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) Each applicant for a Certificate of Title or reissuance thereof shall pay to the designated agent (County Tax Assessor-Collector) the sum of Thirteen [~~Ten~~] Dollars (\$13) [~~(\$10)~~], of which the first Five Dollars (\$5) shall be accounted for by the County Tax Assessor-Collector and disposed of in the method hereinafter provided; and the remaining Eight [~~Five~~] Dollars (\$8) [~~(\$5)~~] shall be forwarded to the State Department of Highways and Public Transportation [~~for deposit in the State Highway Fund~~], together with the application for a Certificate of Title, within twenty-four hours after the same has been received by the County Tax Assessor-Collector [~~from which fees the Department shall be entitled and shall use sufficient money to pay all expenses necessary to efficiently administer and perform the duties set forth herein~~]. Of the Eight Dollars (\$8) forwarded to the Department, Five Dollars (\$5) shall be deposited in the General Revenue Fund and Three Dollars (\$3) shall be deposited in the State Highway Fund to recover the expenses necessary to efficiently administer and perform the duties set forth herein.

SECTION 1.02. (a) The change in law made by this article applies only to a fee imposed on or after the effective date of this article.

(b) This article takes effect December 1, 1991.

ARTICLE 2

SECTION 2.01. DEFINITIONS. In this article:

- (1) "Council" means the Interagency Energy Council.
- (2) "Participating agency" means the office of the comptroller of public accounts, the General Land Office, the Railroad Commission of Texas, or The University of Texas System.
- (3) "Plan" means the comprehensive oil and gas production reporting plan required by Section 2.03 of this article.

SECTION 2.02. INTERAGENCY ENERGY COUNCIL. (a) The Interagency Energy Council is established.

(b) The council consists of the following four members:

- (1) a representative from the office of the comptroller of public accounts designated by the comptroller;
- (2) a representative from the General Land Office designated by the commissioner;
- (3) a representative from the Railroad Commission of Texas designated by the chairman of the commission; and
- (4) a representative from The University of Texas System designated by the chief executive officer of the system.

SECTION 2.03. COMPREHENSIVE OIL AND GAS PRODUCTION REPORTING PLAN. (a) The council shall review each participating agency's existing policies and procedures for reporting oil and gas production and shall prepare and submit to the governor and the legislature not later than January 1, 1992, a comprehensive oil and gas production reporting plan that:

(1) establishes a shared data base containing the taxable values, royalty payment information, and production variables needed by each participating agency to meet its responsibilities;

(2) develops a unified and efficient audit process for participating agencies; and

(3) simplifies tax reporting and royalty payment compliance, enforcement, and collection by providing verified production figures.

(b) The plan shall include specific recommendations concerning:

(1) a single automated, integrated, and comprehensive production reporting system for use by all participating agencies to verify reported oil and gas production volumes and values, including procedures to search for failures to report and for errors in reporting and mechanisms for correcting errors;

(2) coordinated participating agency audits, including simultaneous audits of participating agencies, the use of interagency audit teams, and the coordination of audit results;

(3) integrated and simplified reporting requirements for oil and gas production volumes and values to elicit all data required by each participating agency; and

(4) an integrated system for processing and allocating taxes, fees, royalties, and other payments that maximizes interest earned by the state.

(c) In developing the unified production reporting form required under Subdivision (3) of Subsection (b) of this section, the council may consider the March 1, 1988, recommendations of the interagency energy council task force coordinating committee.

SECTION 2.04. AGENCY SUPPORT. The participating agencies shall provide staff to perform research and analyses needed for preparing the plan and shall submit the results to the council in ample time for the preparation of the preliminary and final plans and the timely submission of the final plan to the governor and the legislature.

SECTION 2.05. AGENCY COMMENT AND APPROVAL. (a) Not later than December 1, 1991, the council shall submit for comment a preliminary plan to the chief executive officer of each participating agency.

(b) Not later than January 1, 1992, the council shall complete and the chief executive officer of each participating agency shall approve a final plan. The chief executive officer of a participating agency who objects to a provision of the final plan may prepare comments to be submitted with the plan.

SECTION 2.06. COSTS. The costs of adopting and implementing a plan under this article shall be paid by funds appropriated for that purpose.

SECTION 2.07. TRANSFER OF AUTHORITY TO COMPTROLLER. (a) If the council does not submit a plan to the legislature by January 1, 1992, the powers and duties of the council under this article are transferred to the comptroller as of that date and this section becomes effective.

(b) Not later than March 1, 1992, the comptroller shall submit for comment a preliminary plan to the chief executive officer of each of the other participating agencies.

(c) At least 30 days before adopting a revision to the plan, the comptroller shall submit the proposed change to each of the other participating agencies.

(d) Not later than August 1, 1992, the comptroller shall adopt a final plan. Each participating agency shall implement the final plan not later than September 1,

1992, and shall implement any changes made by the comptroller to the plan as early as practicable.

(e) The comptroller may revise the plan as the comptroller considers appropriate.

ARTICLE 3

SECTION 3.01. Section 403.016, Government Code, as amended by Section 4, S.B. 1095 and H.B. 1630, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 403.016. ELECTRONIC FUNDS TRANSFER. (a) Except as provided by Subsection (b), the [The] comptroller shall [may] establish and operate an electronic funds transfer system and [to] transfer directly into payees' accounts in financial institutions only:

(1) employees' gross state salaries, less deductions specifically authorized by state or federal law, or reimbursement for employees' travel and subsistence;

(2) payments to annuitants by the Employees Retirement System of Texas or the Teacher Retirement System of Texas under either system's administrative jurisdiction;

(3) recurring payments to governmental entities; and

(4) payments to vendors designated by the comptroller.

(b) An employee, annuitant, or vendor may be paid by warrant drawn by the comptroller on the state treasury instead of by electronic funds transfer if:

(1) the employee holds a classified position under the state's position classification plan, the position is classified below salary group 8 under the classification salary schedule prescribed by the General Appropriations Act, and the employee makes a written request for payment by warrant; or

(2) the employee, annuitant, or vendor shows that he or she cannot establish a qualifying account for electronic funds transfer.

(c) The comptroller may also establish and operate an electronic funds transfer system to transfer directly any portion of employees' gross state salaries into employees' accounts in a money market mutual fund established in the Texas Treasury Safekeeping Trust Company.

[(c) An authorized payee must request in writing to participate in the system.]

(d) A single transfer may contain payments to multiple payees. Individual warrants are not required for each payee. The comptroller shall establish procedures for administering the system and may use the services of financial institutions, automated clearinghouses, and the federal government.

(e) When a law requires the comptroller to make a payment by warrant, the comptroller may instead make the payment through an electronic funds transfer system. The use of an electronic funds transfer system or any other payment means does not create a right that would not have been created if a state warrant had been used.

(f) Notwithstanding the provisions of this section, the comptroller may make a payment by warrant, where the use of electronic funds transfer is impractical or where the cost of using electronic funds transfer would exceed use of the warrant.

SECTION 3.02. Subchapter B, Chapter 403, Government Code, is amended by adding Section 403.0165 to read as follows:

Sec. 403.0165. PAYROLL DEDUCTION FOR STATE EMPLOYEE ORGANIZATION. (a) An employee of a state agency may authorize in writing a transfer each pay period from the employee's salary or wage payment for a membership fee in an eligible state employee organization. The written authorization shall remain in effect until an employee, in writing, authorizes a change in the authorization.

(b) The comptroller by rule shall establish an annual transfer authorization period and shall promulgate rules for transfers by employees to a certified eligible state employee organization.

(c) Participation by employees of state agencies in the payroll deduction program authorized by this section is voluntary.

(d) To be certified by the comptroller, a state employee organization must have a current dues structure for state employees in place and operating in this state for a period of at least 18 months.

(e) Any organization requesting certification shall demonstrate that the fee structure proposed from state employees is equal to an average of not less than one-half of the fees for that organization nationwide.

(f) An organization not previously certified may submit an application for certification as an eligible state employee organization to the comptroller within 90 days prior to the beginning of the fiscal year.

(g) The comptroller may approve an application under Subsection (f) if a state employee organization demonstrates to the satisfaction of the comptroller that it qualifies as an eligible state employee organization by providing the documentation required by this section and applicable rules adopted by the comptroller.

(h) The comptroller shall charge an administrative fee to cover the costs incurred as a result of administering this section. Administrative fees shall be paid by each qualifying state employee organization on a pro rata basis to be determined by the comptroller. The comptroller by rule shall determine the most efficient and effective method of collecting such administrative fees. The comptroller shall adopt rules for the administration of this section.

(i) The comptroller shall allocate the administrative fees on a proportional basis to each employing state agency that incurs costs in administering this subsection.

(j) The administrative fees withheld by the comptroller under this section are appropriated to the comptroller and the employing state agencies.

(k) Any state employee organization that has a membership of at least 4,000 state employee members on April 1, 1991, shall be certified by the comptroller as an eligible state employee organization. Such an organization may not be required to meet any other eligibility requirements as set out in this section for certification, including requirements in the definition of eligible state employee organization under Subsection (l).

(l) In this section:

(1) "Eligible state employee organization" means a state employee organization with a membership of at least 4,000 state employees continuously for the 18 months preceding a request for certification from the comptroller that conducts activities on a statewide basis and that the comptroller has certified under this article.

(2) "State agency" means a department, commission, board, office, or any other state entity of state government.

SECTION 3.03. Section 1, Article 6826, Revised Statutes, as amended by Section 38, S.B. 1095, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 1. Except as provided by Section 2 of this article, the annual salaries provided for in this title shall be paid monthly through the[

~~(1) on warrants drawn by the comptroller on the treasurer, or~~

~~(2) via an] electronic funds transfer system established under [in accordance with] Section 403.016, Government Code, unless paid on warrants as permitted under that section.~~

SECTION 3.04. This article takes effect January 1, 1992.

ARTICLE 4

SECTION 4.01. Sections 404.095(a), (b), and (c), Government Code, are amended to read as follows:

(a) This section applies only to a state agency that during the preceding state fiscal year collected or received more than \$50 [~~\$100~~] million in fees, fines, penalties, taxes, charges, gifts, grants, donations, and other funds, excluding federal grants and interest and dividend income.

(b) If during the preceding state fiscal year a person paid a state agency a total of \$500,000 [~~\$2 million~~] or more in a category of payments and the agency reasonably anticipates that during the current state fiscal year the person will pay the agency \$500,000 [~~\$2 million~~] or more in a category of payments, the state agency shall require the person to transfer payment amounts of \$25,000 or more due to the agency in that category, on or before the date the payment is due, by one or more of the means of electronic funds transfer approved by the treasurer. For the purposes of this section, each of the following is a separate category of payments to a state agency:

- (1) fees;
- (2) fines;
- (3) civil penalties;
- (4) taxes, with each type of tax specified by the treasurer being considered a separate category; and
- (5) other payments to the state agency, excluding extraordinary payments such as gifts, grants, donations, interest and dividend income, and onetime surcharges.

(c) A state agency by rule may require a person other than a person subject to Subsection (b) to transfer payment amounts of \$10,000 or more due in a category of payments to the agency on or before the date the payment is due by electronic funds transfer if the person paid the agency a total of \$250,000 [~~\$500,000~~] or more in that category of payments.

SECTION 4.02. Subchapter F, Chapter 404, Government Code, is amended by adding Section 404.096 to read as follows:

Sec. 404.096. RAPID DEPOSITS, TRANSACTIONS, AND TRANSFERS REQUIRED. According to a schedule established by the treasurer, the treasurer shall conduct a study of each state agency that collects or receives \$50 million or more a year from all sources or processes 100,000 or more transactions a year of any kind to determine whether implementing a program for the rapid administration of deposits or transactions by the agency or for the rapid transfer of revenue or information to or from the state agency would result in a net savings of state revenue. If the treasurer determines that the implementation of a program for the rapid administration of deposits or transactions or for the rapid transfer of revenue or information to or from the state agency would result in a net savings of state revenue, the treasurer may require the agency to implement a program for that rapid administration or transfer that meets the specifications of the treasurer.

SECTION 4.03. Section 111.053, Tax Code, is amended to read as follows:

Sec. 111.053. FILING DATES: WEEKENDS AND HOLIDAYS. (a) If the date on which a report or payment of any state tax is due falls on a Saturday, Sunday, or legal holiday included on the list published for the year under Subsection (b), the next day that is not a Saturday, Sunday, or legal holiday included on that list becomes the due date.

(b) Before January 1 of each year, the treasurer shall publish in the Texas Register and distribute to each state agency that receives reports or payments of any taxes a list of the legal holidays for banking purposes for that year. The treasurer may not include on the list a holiday on which the treasurer determines that most financial institutions will be conducting ordinary business.

(c) An agency that collects a tax for which a due date for a report or payment falls on a legal holiday not included on the list published under Subsection (b) shall ensure that a taxpayer may make a report or payment on that date. The agency may enter into an agreement with the treasurer or the comptroller for the receipt of reports or payments on that date.

SECTION 4.04. (a) Sections 4.01 and 4.02 of this article take effect September 1, 1991, but only if any portion of this Act may take effect in accordance with law before the 90th day after the adjournment of the session of the legislature in which this Act is enacted; otherwise, this article takes effect on the first day of the first month that begins at least 90 days after the adjournment of that session of the legislature.

(b) Section 4.03 of this article takes effect December 1, 1991.

ARTICLE 5

SECTION 5.01. Subchapter B, Chapter 402, Government Code, is amended by adding Sections 402.0211 and 402.0212 to read as follows:

Sec. 402.0211. PROVISION OF LEGAL SERVICES—IN-HOUSE AGENCY COUNSEL. (a) Except as provided in this section, the attorney general shall provide all legal services for each agency in the executive department of the state government for which the attorney general determines those legal services are appropriate and for which the attorney general has not approved the employment or retention of other attorneys under this section or Section 402.0212.

(b) The legislature may appropriate revenue to the attorney general to provide legal services to an agency under this section or may appropriate revenue to an agency from which the agency may reimburse the attorney general for the costs of providing legal services under this section. The attorney general shall adopt a schedule of the costs of providing legal services to agencies under this section. If the legislature appropriates revenue to an agency for the reimbursement of the attorney general's costs of providing legal services to the agency, the attorney general shall adopt a billing system as necessary to administer the reimbursement.

(c) An agency covered by Subsection (a) may employ or retain attorneys other than the attorney general to provide legal services for the agency only to the extent that:

(1) funds are specifically appropriated for that purpose; or

(2) the employment or retention is authorized by the attorney general under Subsection (d).

(d) The attorney general may authorize a state agency covered by this section to employ or retain an attorney to provide legal services to represent the agency in instances where the attorney general determines such representation to be appropriate.

(e) This section does not apply to:

(1) the governor's office;

(2) an institution of higher education, as defined by Section 61.003, Education Code;

(3) an agency expressly authorized by the General Appropriations Act or other statute to hire or select legal counsel;

(4) an agency governed by one or more elected officials;

(5) an agency with a director appointed by the governor;

(6) the Central Education Agency;

(7) the Department of Public Safety;

(8) the Employees Retirement System of Texas or the Teacher Retirement System of Texas;

(9) the Parks and Wildlife Department;

(10) the State Board of Insurance;

(11) the State Highway and Public Transportation Commission or the State Department of Highways and Public Transportation;

- (12) the Texas Department of Criminal Justice;
- (13) the Texas Employment Commission;
- (14) the Texas Higher Education Coordinating Board;
- (15) the Texas Natural Resource Conservation Commission;
- (16) the Texas Workers' Compensation Commission; or
- (17) the Texas Youth Commission.

(f) For purposes of this section, the functions of a hearing examiner, administrative law judge, or other quasi-judicial officer are not considered legal services.

(g) The attorney general shall adopt a plan for the implementation of this section before January 1, 1992. The attorney general shall comply with this section before September 1, 1992. This subsection expires January 1, 1993.

Sec. 402.0212. PROVISION OF LEGAL SERVICES—OUTSIDE COUNSEL. (a) Except as authorized by other law, a contract for legal services between an attorney, other than a full-time employee of the agency, and a state agency in the executive department, other than an agency established by the Texas Constitution, must be approved by the attorney general to be valid. The attorney general shall provide legal services for a state agency for which the attorney general determines those legal services are appropriate and for which the attorney general denies approval for a contract for those services under this subsection.

(b) For purposes of this section, the functions of a hearing examiner, administrative law judge, or other quasi-judicial officer are not consider legal services.

ARTICLE 6

SECTION 6.01. Title 110A, Revised Statutes, is amended by adding Article 6252-5e to read as follows:

Art. 6252-5e. COLLECTION OF DELINQUENT OBLIGATIONS TO STATE

Sec. 1. DEFINITIONS. In this article:

(1) "Obligation" includes a debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(2) "State agency" means any agency, board, commission, institution, or other unit of state government.

Sec. 2. COLLECTION PROCESS TO BE ESTABLISHED. (a) The attorney general shall adopt uniform guidelines relating to the process by which state agencies collect delinquent obligations owed to the agencies. Each state agency that collects delinquent obligations owed to the agency by rule shall establish procedures for the collection of those delinquent obligations and shall establish a reasonable period for that collection. The rules must conform to the guidelines established by the attorney general. Until a state agency adopts rules as required by this subsection, the attorney general by rule may establish the collection procedures for the agency, including the period for collecting a delinquent obligation. Not later than the 30th day after the date a state agency determines that normal agency collection procedures for an obligation owed to the agency have failed, the agency shall report the uncollected and delinquent obligation to the attorney general for further collection efforts.

(b) The attorney general may develop specific reporting procedures for each state agency and may adopt rules relating to the reports, including rules specifying when an agency must report and what information must be included in the report.

(c) The attorney general shall adopt the guidelines required by Subsection (a) of this section before June 1, 1992. Each state agency shall adopt the initial rules for a collection process under Subsection (a) of this section before September 1, 1992. Before September 1, 1992, the attorney general may not establish collection procedures for an agency that does not adopt its own procedures. This subsection expires January 1, 1993.

Sec. 3. RECOVERY OF ATTORNEY'S FEES AND OTHER COSTS. In any proceeding under this article or any other law authorizing or requiring the attorney general to collect a delinquent obligation, or in any other proceeding by which the state seeks to collect or recover a delinquent obligation or damages, the attorney general may charge, seek, recover, and collect reasonable attorney's fees, investigative costs, and court costs incurred on behalf of the state in the proceeding in the same manner as provided by general law for a private litigant.

Sec. 4. COLLECTION OR APPROVAL BY ATTORNEY GENERAL. A state agency, before contracting with, retaining, or employing any person other than a full-time employee of the agency for collection of any obligation, shall request the attorney general to collect the obligation. If the attorney general cannot do so, the attorney general may authorize the requesting state agency to employ, retain, or contract with a person other than a full-time employee of the agency to collect the obligation.

Sec. 5. RETENTION OF COLLECTION FEE. An obligation reported to the attorney general under this article is subject to a collection fee for the use and benefit of the attorney general as provided by legislative appropriation. The attorney general may collect the fee by retaining the amount of the fee from the amount of the obligation collected. The attorney general shall deposit the collection fees received or retained to the credit of the general revenue fund. However, no such fee may be retained from amounts collected for the Unemployment Compensation Fund established pursuant to Section 9, Texas Unemployment Compensation Act (Article 5221b-7, Vernon's Texas Civil Statutes).

SECTION 6.02. Section 402.022, Government Code, is repealed.

SECTION 6.03. A county or district attorney representing the state in the collection of an obligation owed to the state on the effective date of this article shall, at the direction of the attorney general, continue the representation or transfer representation to the attorney general.

SECTION 6.04. This article takes effect September 1, 1991, but only if any portion of this Act may take effect in accordance with law before the 90th day after the adjournment of the session of the legislature in which this Act is enacted; otherwise, this article takes effect on the first day of the first month that begins at least 90 days after the adjournment of that session of the legislature.

ARTICLE 7

SECTION 7.01. Section 9c(a), Texas Unemployment Compensation Act (Article 5221b-7c, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The Advance Interest Trust Fund is established. The fund is a trust fund in the custody of the State Treasurer and may be used without appropriation by the Governor for the purpose of paying interest incurred on advances from the federal Unemployment Trust Fund, incurred on any bonds issued to reduce or avoid federal advances to the unemployment compensation fund, and to repay temporary transfers of surplus cash which may be made between this fund and other funds. The State Treasurer and the Comptroller shall transfer all income earned after September 1, 1988, [Income] from investment of the fund [shall be deposited] to the Unemployment Compensation Special Administration Fund for the administration of the pay day law (Article 5155, Revised Statutes), Texas Minimum Wage Act (Article 5159d, Vernon's Texas Civil Statutes), and the child labor law, Chapter 531, Acts of the 67th Legislature, Regular Session, 1981 (Article 5181.1, Vernon's Texas Civil Statutes) [credit of the fund]. [If the amount of the fund exceeds the amount required to pay interest incurred on advances and on any bonds issued to reduce or avoid federal advances to the unemployment compensation fund, the Governor shall transfer all or part of the surplus to the unemployment compensation fund for the payment of benefits.] If the Governor, upon the advice of the Commission, determines that funds in the unemployment compensation

fund will be depleted at the time payment on an advance from the federal Unemployment Trust Fund is due, and that depletion of the funds will cause the loss of some portion of the credit received by employers against their federal unemployment tax rate, or if the Governor determines that payment of interest on a federal loan can be avoided by keeping the balance of the unemployment compensation fund positive, the Governor may authorize the Commission to transfer money from the Advance Interest Trust Fund to the unemployment compensation fund.

ARTICLE 8

SECTION 8.01. Chapter 751, Government Code, as added by S.B. 448, Chapter 38, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

CHAPTER 751. OFFICE OF STATE-FEDERAL RELATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 751.001. DEFINITIONS. In this chapter:

(1) "Board" means the Office of State-Federal Relations Advisory Policy Board.

(2) "Director" means the director of the Office of State-Federal Relations.

(3) ~~[(2)]~~ "Office" means the Office of State-Federal Relations.

(4) "State agency" means a state board, commission, department, institution, or officer having statewide jurisdiction, including a state college or university.

Sec. 751.002. OFFICE OF STATE-FEDERAL RELATIONS. The Office of State-Federal Relations is an agency of the state and operates within the executive department.

Sec. 751.003. SUNSET ACT APPLICABILITY. The office is subject to Chapter 325 (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished and this chapter expires September 1, 1995.

Sec. 751.004. APPOINTMENT AND TERM OF DIRECTOR. (a) The governor, with the advice and consent of the senate, shall appoint a director of the office.

(b) The director serves at the pleasure of the governor.

Sec. 751.005. GENERAL POWERS AND DUTIES OF DIRECTOR. (a) The director shall exercise the powers and carry out the duties prescribed by this section in order to act as a liaison from the state to the federal government.

(b) The director shall:

(1) help coordinate state and federal programs dealing with the same subject;

(2) inform the governor and the legislature of federal programs that may be carried out in the state or that affect state programs;

(3) provide federal agencies and the United States Congress with information about state policy and state conditions on matters that concern the federal government;

(4) provide the legislature with information useful in measuring the effect of federal actions on the state and local programs; and

(5) prepare ~~[an annual report of the office's operations and recommendations]~~ and supply ~~[a copy of the report]~~ to the governor and all members of the legislature an annual report that:

(A) describes the office's operations;

(B) contains the office's priorities and strategies for the

following year;

(C) details projects and legislation pursued by the office;

(D) discusses issues in the following congressional session of interest to this state; and

(E) contains an analysis of federal funds availability and formulae.

(c) The director may maintain office space at locations inside and outside the state as chosen by the director.

Sec. 751.006. STAFF; CAREER LADDER PROGRAM. (a) The director may employ staff necessary to carry out the director's powers and duties under this chapter.

(b) The director or the director's designee shall develop an intraagency career ladder program that includes the intraagency posting of all nonentry level positions for at least 10 days before the date of any public posting.

(c) The director or the director's designee shall develop a system of annual performance evaluations based on measurable job tasks and merit pay for staff must be based on this system.

Sec. 751.007. LOBBYIST RESTRICTION. A person required to register as a lobbyist under Chapter 305 may not act as general counsel of the office.

Sec. 751.008. PUBLIC INFORMATION AND COMPLAINTS. (a) The director shall:

(1) prepare information of public interest describing the director's functions and the procedures by which complaints are filed with and resolved by the director;

(2) make the information available to the public and appropriate state agencies; and

(3) maintain an information file on each complaint filed relating to an office activity.

(b) If a written complaint relating to an office activity is filed with the director, the director, at least quarterly and until final disposition of the complaint, shall notify the parties to the complaint of the status of the complaint unless the notice would jeopardize an undercover investigation.

Sec. 751.009. CONTRIBUTIONS. (a) The office may accept contributions that the office determines will further the objectives of the office.

(b) A contribution may not be used to pay any part of the compensation of a person who is an officer or employee of the office on the date the office receives the contribution.

Sec. 751.010. OFFICE OF STATE-FEDERAL RELATIONS ADVISORY POLICY BOARD. (a) The Office of State-Federal Relations Advisory Policy Board consists of:

(1) the governor;

(2) the lieutenant governor; and

(3) the speaker of the house of representatives.

(b) A member of the board may designate a person to perform the member's duties on the board.

(c) The board, by majority vote, shall select a chairman of the board.

(d) A majority of the members of the board constitutes a quorum to transact business.

(e) The board shall meet before the beginning of each congressional session and at the call of the chairman.

Sec. 751.011. BOARD DUTIES. The board shall review the office's priorities and strategies set forth in the annual report and deliver to the director any suggested modifications.

Sec. 751.012. INTERAGENCY CONTRACTS. The office may enter into interagency contracts with other state agencies to locate staff of the other state agency in Washington, D.C., to work under the office's supervision.

[Sections 751.013-751.020 reserved for expansion]
SUBCHAPTER B. FEDERAL FUNDS MANAGEMENT

Sec. 751.021. DEFINITIONS. In this subchapter:

(1) "Earned federal funds" means funds that are received or earned in connection with a federally funded program but that are not required by the governing agreement to be disbursed on that program. The term includes indirect cost receipts and interest earned on advances of federal funds.

(2) "Federal funds" means all assistance provided or potentially available to state agencies from the federal government in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, direct appropriations, or any other method of disbursement.

(3) "Indirect costs" means costs, as defined by Federal Management Circular A-87 or subsequent revisions of that circular, that are incurred by state agencies in support of federally funded programs and that are eligible for reimbursement from the federal government.

(4) "Local governmental entity" means a county, municipality, special purpose district, including a school district, or any other political subdivision of this state.

(5) "State funds" means all assistance provided or potentially available to state agencies from the state government in the form of grants, contracts, loans, loan guarantees, property, cooperative agreements, interest subsidies, insurance, direct appropriations, or any other method of disbursement.

Sec. 751.022. POWERS AND DUTIES. (a) The office has primary responsibility for monitoring, coordinating, and reporting on the state's efforts to ensure receipt of an equitable share of federal funds.

(b) The office shall:

(1) serve as the state's clearinghouse for information on federal and state funds;

(2) prepare reports on federal funds and earned federal funds;

(3) monitor the federal register, the Texas Register, and other federal or state publications to identify federal and state funding opportunities, with special emphasis on discretionary grants or other funding opportunities that the state is not pursuing;

(4) develop procedures to formally notify appropriate state and local agencies of the availability of federal funds and coordinate the application process;

(5) periodically review the funding strategies and methods of those states that rank significantly above the national average in the per capita receipt of federal funds to determine whether those strategies and methods could be successfully employed by this state;

(6) analyze proposed and pending federal and state legislation to determine whether the legislation would have a significant negative effect on the state's ability to receive an equitable share of federal funds;

(7) make recommendations for coordination between state agencies and local governmental entities and between state agencies; and

(8) adopt rules, under the rulemaking procedures of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), as necessary to carry out the responsibilities assigned by this subchapter.

(c) The office shall annually prepare a comprehensive report to the legislature on the effectiveness of the state's efforts to ensure receipt of an equitable share of federal funds for the preceding federal fiscal year. The report must include:

(1) an executive summary that provides an overview of the major findings and recommendations included in the report;

(2) a comparative analysis of the state's receipt of federal funds relative to other states, prepared using the best available sources of data;

(3) an analysis of federal funding trends that may have a significant effect on resources available to the state;

(4) a description of any instances in which the state or a state agency has not pursued available opportunities to receive federal funds or earned federal funds and the reason for the failure to pursue the opportunity; and

(5) recommendations, developed in consultation with the Legislative Budget Board, the Governor's Office of Budget and Planning, and the comptroller, for any state legislative or administrative action necessary to increase the state's receipt of federal funds, enhance the recovery of indirect costs, or otherwise improve the state's management of federal funds or earned federal funds.

(d) Each state agency shall designate an employee on the management or senior staff level to serve as the agency's federal funds coordinator. An agency may not create a staff position for a federal funds coordinator. The coordinator's duties are additional duties of an employee of the agency. Each federal funds coordinator shall:

(1) oversee and coordinate the agency's efforts in acquiring federal funds;

(2) send the office a quarterly report listing the grants for which the agency has applied and listing the catalogue of federal domestic assistance number and giving a short description of the grant; and

(3) notify the office of the award or denial of a federal grant to the agency.

(e) Each state agency or institution shall file an annual report with the office concerning the agency's efforts in acquiring available federal funds during the preceding state fiscal year. The office shall establish guidelines for information included in the annual report required by this section. The office shall evaluate the effectiveness of each agency in acquiring federal funds and shall report to the governor and the Legislative Budget Board.

(f) If the governor or Legislative Budget Board, after reviewing the reports under Subdivision (e), determines that any agency's efforts were unsatisfactory, either entity may, without a finding of an existing emergency, take action under Chapter 317 to affect the agency's appropriation.

[Sections 751.023-751.040 reserved for expansion]

SUBCHAPTER C. GRANT ASSISTANCE

Sec. 751.041. GRANT WRITING TEAM. (a) The director shall establish a state grant writing team in the office. The principal office of the team must be located in Austin, Texas. The director may provide for the team to maintain an office in the District of Columbia.

(b) The grant writing team shall:

(1) develop a plan for increased access by the state to available federal funds; and

(2) coordinate with other state agencies to develop a plan for the use of federal grant funds.

Sec. 751.042. GRANT INFORMATION. The office may:

(1) establish a clearinghouse of information relating to the availability of state, federal, and private grants;

(2) establish an automated information system data base for grant information and make it available for use by state agencies and political subdivisions;

(3) provide counseling to state agencies, political subdivisions of the state, nonprofit charitable institutions, educational institutions, and residents of the state relating to the availability and means of obtaining state, federal, and private grants;

(4) provide, or enter contracts with appropriate entities to provide, assistance in writing grant proposals to individuals and through workshops and institutional assistance;

(5) publicize the services and activities of the grant writing team through chambers of commerce, councils of government, department newsletters, local governments, state agencies, institutions of higher education, business organizations, private philanthropic organizations, and other appropriate entities and methods;

(6) maintain a list of approved grant managers for grant projects that require grant managers; and

(7) analyze the criteria for grants for which state agencies are denied access because of state law or rules or agency organization, and suggest to an affected state agency changes in rules or organization that would increase the probability of the agency's receiving federal or other grants.

Sec. 751.043. FEES. When appropriate, the office shall charge and collect fees from persons who use the grant writing team's services and who receive a grant. The fees shall be set in amounts necessary to cover all or a part of the costs of carrying out this subchapter.

SECTION 8.02. Subchapter W, Chapter 481, Government Code, is repealed.

SECTION 8.03. (a) As soon as practicable after the effective date of this article, the Texas Department of Commerce shall transfer to the Office of State-Federal Relations all records in the department's possession that relate to the administration of Subchapter W, Chapter 481, Government Code (repealed by this article).

(b) On the effective date of this article, the Office of State-Federal Relations assumes the outstanding obligations of the Texas Department of Commerce with respect to any existing contracts entered into by the department before the effective date of this article under Subchapter W, Chapter 481, Government Code (repealed by this article).

ARTICLE 9

SECTION 9.01. Section 6, Texas Internal Auditing Act (Article 6252-5d, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. DUTIES OF INTERNAL AUDITOR. The internal auditor shall:

(1) report directly to the agency's governing board or commission with access to the agency administrator;

(2) develop an annual audit plan, which shall be approved by the governing board of the agency or its designee, or by the administrator of an agency without a governing board;

(3) conduct audits as specified in the audit plan with documented deviations;

(4) prepare audit reports, which shall be reviewed by the agency administrator and the agency's governing board or commission;

(5) conduct quality assurance reviews in accordance with professional standards and periodically take part in a comprehensive external peer review; [and]

(6) be free of all operational and management responsibilities that would impair the ability to make independent reviews of all aspects of the agency's operations; and

(7) conduct economy and efficiency audits and program results audits as directed by the governing board or commission.

SECTION 9.02. The Texas Internal Auditing Act (Article 6252-5d, Vernon's Texas Civil Statutes) is amended by adding Section 6A to read as follows:

Sec. 6A. ANNUAL REPORTS. (a) In addition to the duties prescribed by Section 6 of this Act, the internal auditor shall, before November 1 of each year, prepare an annual report and submit the report to the governor, the Legislative

Budget Board, the Sunset Commission, the state auditor, the agency's governing board, and the agency administrator.

(b) The report must contain:

- (1) a copy of the annual audit plan;
- (2) a list of audits completed;
- (3) an explanation of any deviation from the approved annual audit plan;
- (4) a narrative description of the most significant findings and recommendations for each audit;
- (5) a narrative description of the management actions taken in response to the audit findings and recommendations;
- (6) a table listing the auditor's audit recommendations and the five-year fiscal impact for each audit recommendation;
- (7) a table of the audit recommendations from the previous fiscal year's report and an explanation of the status of each recommendation; and
- (8) a statement of the last date on which an external peer review of the agency's internal audit program was conducted.

(c) Each recommendation must show whether:

- (1) the recommendation has been implemented;
- (2) the recommendation is in the process of implementation;
- (3) action on implementation of the recommendation has been delayed; or
- (4) the agency does not intend to take action on the recommendation.

(d) Findings in key areas that are difficult to quantify, including weaknesses in management controls or quality of services, shall be highlighted and emphasized in the report.

SECTION 9.03. Section 321.013, Government Code, is amended by adding Subsection (j) to read as follows:

(j) The State Auditor shall, before December 1 of each year, comprehensively analyze each annual report prepared under Section 6A, Texas Internal Auditing Act (Article 6252-5d, Vernon's Texas Civil Statutes), and publish a summary of the State Auditor's findings. The summary must include all major internal audit findings, conclusions, and recommendations, and must identify and analyze issues that are common to more than one state agency.

ARTICLE 10

SECTION 10.01. DEFINITIONS. In this article:

- (1) "Board" means the Texas Water Development Board.
- (2) "Master contract" means the master contract between Red Bluff District and member districts dated March 8, 1934.
- (3) "Member district" means any one of the seven member districts of Red Bluff District, which are:
 - (A) Loving County Water Improvement District No. One;
 - (B) Reeves County Water Improvement District No. Two;
 - (C) Ward County Water Improvement District No. Three;
 - (D) Ward County Irrigation District Number One;
 - (E) Ward County Water Improvement District No. Two;
 - (F) Pecos County Water Improvement District No. Two; and
 - (G) Pecos County Water Improvement District No. Three.

(4) "Pecos River compact account" means the special account in the water assistance fund of the board created under Section 15.702, Water Code.

(5) "Principal amount" means the amount of \$13.8 million, representing the amount received by the state by order of the United States Supreme Court in the case of Texas v. New Mexico (58 U.S.L.W. 3543) and deposited to the credit of the Pecos River compact account.

(6) "Red Bluff District" means the Red Bluff Water Power Control District, a water power control district created under Chapter 76, General Laws, Acts of the 43rd Legislature, Regular Session, 1933 (Article 7807d, Vernon's Texas Civil Statutes).

(7) "Distribution date" means the date of the distribution of funds held in the Pecos River compact account from the board to Red Bluff District under this Act.

SECTION 10.02. DISTRIBUTION OF FUNDS BY BOARD. (a) As soon as practicable after the effective date of this article, the board shall transfer one-half of the interest earned by the Pecos River compact account on or after March 1, 1990, and before September 1, 1991, to the state treasurer for deposit to the credit of the general revenue fund.

(b) Notwithstanding the provisions of any other law, the board, after making the transfer required by Subsection (a) of this section, shall promptly distribute all funds, including the principal amount and all accrued interest not transferred under Subsection (a), in the Pecos River compact account to Red Bluff District.

SECTION 10.03. USE OF FUNDS. The funds received by Red Bluff District under this article, together with any interest earned on the funds, shall be used by Red Bluff District or a member district only for agricultural or irrigation projects, including associated water quality improvement projects that affect surface water irrigators in the counties of Loving, Ward, Reeves, and Pecos. The projects may include the operation of the Red Bluff District or a member district and the maintenance of the water supply reservoirs, associated downstream diversion facilities, and internal distribution systems of the Red Bluff District or a member district.

SECTION 10.04. DISTRIBUTION OF FUNDS BY RED BLUFF DISTRICT. (a) Interest earned on the principal amount shall be allocated:

(1) one-third to Red Bluff District; and

(2) two-thirds to member districts, to be allocated among the member districts in the same percentages as each member district's pro rata share of water under the master contract.

(b) On receipt of funds from the board under this article, Red Bluff District shall promptly distribute interest earned on the principal amount as of the distribution date and received by Red Bluff District in accordance with Subsection (a) of this section.

(c) Red Bluff District shall invest the principal amount in accordance with the Public Funds Investment Act of 1987 (Article 842a-2, Vernon's Texas Civil Statutes). Red Bluff District shall comply with the Public Funds Collateral Act (Article 2529d, Vernon's Texas Civil Statutes) to the extent applicable.

(d) Interest earned on the principal amount after the distribution date shall be distributed by Red Bluff District annually in accordance with Subsection (a) of this section.

(e) Red Bluff District may not spend any portion of the principal amount unless an affirmative vote in favor of the expenditure is received from:

(1) the board of directors of Red Bluff District; and

(2) the boards of directors of at least five of the member districts.

SECTION 10.05. ANNUAL ACCOUNTING. Red Bluff District shall provide an annual accounting of its administration of funds under this article and of the amount of interest earned to each member district and the board.

SECTION 10.06. REPEALER. Subchapter K, Chapter 15, Water Code, is repealed.

SECTION 10.07. CONFORMING AMENDMENT. Section 15.011(b), Water Code, is amended to read as follows:

(b) After notice and hearing and subject to any limitations established by the General Appropriations Act, the board may transfer money from the fund to the loan fund created under Subchapter C of this chapter, the storage acquisition fund created under Subchapter E of this chapter, and the research and planning fund created under Subchapter F of this chapter, ~~and the Pecos River compact account created under Subchapter K of this chapter~~.

SECTION 10.08. CONFORMING AMENDMENT. Section 15.012(c), Water Code, is amended to read as follows:

(c) Money appropriated to the fund by the legislature for a specific purpose stated in Subchapter C, E, or F, ~~or K~~ of this chapter shall be placed in the appropriate fund ~~[or account]~~ created by that subchapter.

SECTION 10.09. EFFECTIVE DATE. (a) Except as provided by Subsection (b) of this section, this article takes effect September 1, 1991, but only if any portion of this Act may take effect in accordance with law before the 90th day after the adjournment of the session of the legislature in which this Act is enacted; otherwise, this article takes effect on the first day of the first month that begins at least 90 days after the adjournment of that session of the legislature.

(b) Section 10.06 of this article takes effect January 1, 1992.

ARTICLE 11

SECTION 11.01. Section 403.001, Government Code, is amended to read as follows:

Sec. 403.001. DEFINITIONS ~~[DEFINITION]~~. (a) In any state statute, "comptroller" means the comptroller of public accounts of the State of Texas.

(b) In this chapter:

(1) "Account" means a subdivision of a fund.

(2) "Dedicated revenue" means revenue set aside by law for a particular purpose or entity.

(3) "Fund" means a fiscal and accounting entity with a self-balancing set of accounts recording cash and other financial resources.

(4) "Special fund" means a fund, other than the general revenue fund, that is established by law for a particular purpose or entity.

SECTION 11.02. Section 403.071(d), Government Code, is amended to read as follows:

(d) A warrant may not be drawn against an appropriation from a special fund or account unless the fund or account contains in the state treasury sufficient cash to pay the warrant. The comptroller may not release or deliver a warrant unless the appropriation against which the warrant is drawn has a balance sufficient to pay the warrant.

SECTION 11.03. Section 403.091, Government Code, as amended by Section 5, S.B. 1004, Acts of the 72nd Legislature, Regular Session, 1991, is redesignated as Section 403.0915, Government Code, and amended to read as follows:

Sec. 403.0915 ~~[403.091]~~. DORMANT FUND OR ACCOUNT. At any time the comptroller, with the consent and approval of the state treasurer and with notification to the state auditor, may transfer to the general revenue fund a balance in a dormant fund or account if the source of the fund or account is unknown or the purpose for which it was collected is moot. The legislature at any time after the transfer may appropriate the balance as a refund if the source and purpose of the fund or account become known and active. The comptroller shall report any dormant funds or accounts to the Funds Review Advisory Committee.

SECTION 11.04. Subchapter F, Chapter 403, Government Code, is amended by adding Sections 403.094, 403.095, and 403.096 to read as follows:

Sec. 403.094. CONSOLIDATION OF FUNDS; ABOLITION OF DEDICATIONS. (a) The comptroller, with the concurrence of the treasurer, may abolish any fund or account in existence on or before August 31, 1993. The money in the abolished funds or accounts shall be merged, combined, or segregated into the general revenue fund or other funds as determined by the comptroller under Subsection (c). The comptroller may establish accounts in the general revenue fund or other funds to identify each source of revenue.

(b) The comptroller, with the concurrence of the treasurer, may segregate an account in a fund and combine the account into any other fund in existence on or before August 31, 1993.

(c) The comptroller may determine the fund and account into which dedicated revenues must be deposited. The comptroller may combine two or more funds or dedications of revenue in the same fund if separate accounts are maintained to properly account for state revenues and expenditures. This subsection applies only to revenues dedicated by a law in effect on or before August 31, 1993.

(d) The comptroller, with the concurrence of the treasurer, shall, to the extent possible, merge funds in existence on or before August 31, 1993, into the general revenue fund. Funds that cannot be merged into the general revenue fund because of constitutional, federal, or other restrictions shall be grouped into separate funds that conform to the groupings used in the Texas Annual Cash Report or as necessary to conform to generally accepted accounting principles.

(e) The comptroller may designate or create additional funds as necessary for the prudent management of the state's fiscal affairs or as required by the state constitution or federal law. The comptroller may combine funds or dedications of revenue within a particular fund if accounts are maintained to properly account for state revenues and expenditures.

(f) All outstanding cash, assets, liabilities, receivables, appropriations, and fund equity from funds and accounts merged, combined, or segregated by the comptroller under Subsections (a) through (c) shall be transferred not later than August 31, 1993, to the general revenue fund or other fund designated by the comptroller under Subsection (e).

(g) Notwithstanding the combination, merger, or segregation of any fund or account by the comptroller under this section, the same guidelines, restrictions, amounts, and limitations apply to appropriations and expenditures made from dedicated revenue sources that would apply to appropriations and expenditures from separate funds maintained for those dedicated revenues.

(h) All funds or special accounts in the state treasury in existence on August 31, 1995, established by state statute dedicating state revenue for a particular purpose or entity are abolished on that date, and all statutory dedications of state revenue, other than statutory dedications enacted to comply with state constitutional or federal requirements, enacted before that date are null and void as of that date. This subsection does not abolish a dedication of revenue that is reenacted by the legislature after September 1, 1991, or that is expressly exempted or excluded from the application of this subsection.

(i) The comptroller may merge, consolidate, or segregate as an account within another fund group a fund created after January 1, 1992, unless expressly provided otherwise by the law creating the fund.

(j) This section does not apply to:

(1) funds outside the treasury;

(2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;

(3) funds created by the constitution or a court;
 (4) funds for which separate accounting is required by federal law; or
 (5) funds for revenue to be expended only by an agency or entity in the judicial branch of government.

Sec. 403.095. USE OF DEDICATED REVENUE. (a) Notwithstanding any action taken by the comptroller under Section 403.094, revenue that has been set aside by law for a particular purpose or entity is available for that purpose or entity to the extent money is appropriated for that purpose or entity. Expenditures made in furtherance of the dedicated purpose or entity shall be made from money received from the dedicated revenue source to the extent those funds are appropriated.

(b) Notwithstanding any law dedicating or setting aside revenue for a particular purpose or entity, dedicated revenues that, at the end of a biennium, exceed the amount appropriated are available for general governmental purposes. This subsection does not apply to revenues in:

(1) funds outside the treasury;
 (2) trust funds, which for purposes of this section include funds that may or are required to be used in whole or in part for the acquisition, development, construction, or maintenance of state and local government infrastructures, recreational facilities, or natural resource conservation facilities;
 (3) funds created by the constitution or a court; or
 (4) funds for which separate accounting is required by federal law.

(c) The availability of revenues for general governmental purposes conferred by Subsection (b) expires on the first day of the subsequent biennium.

Sec. 403.096. FUNDS REVIEW ADVISORY COMMITTEE. (a) The Funds Review Advisory Committee is created.

(b) The committee is composed of the following members or their designees:

(1) the governor;
 (2) the comptroller;
 (3) the state treasurer;
 (4) the state auditor; and
 (5) the director of the Legislative Budget Board.

(c) On or before November 1 of each even-numbered year, the committee shall submit a comprehensive report on existing special funds, accounts, and dedications of revenue to the governor, the legislature, and the director of the Legislative Budget Board. The report shall contain recommendations concerning whether to continue or eliminate any funds, accounts, or dedications. The report shall also contain recommendations concerning the consolidation of funds or accounts. The committee shall determine which funds and accounts will be considered in each report. In making its recommendations, the committee shall consider:

(1) whether the fund or account continues to serve the purpose for which it was created;
 (2) whether the fund or account has the capacity to satisfy expenditures from the fund or account through the revenue deposited into the fund or account;
 (3) whether there is a clear link between the benefit sought and charges assessed; and
 (4) whether a separate fund or account is justified.

(d) At least two months before submitting its report, the committee shall request comments from agencies whose funds might be affected by the recommendations. The agencies shall submit any comments to the committee in writing in the time established by the committee.

(e) The governor's office of budget and planning and the Legislative Budget Board shall consider the committee's recommendations in making their budget and appropriations recommendations to the legislature.

(f) Each agency or office represented on the committee shall provide staff for the committee. A staff member remains as an employee of the represented agency or office for all purposes.

(g) State agencies shall provide the committee with any information or assistance the committee needs to fulfill its duties.

(h) The committee may conduct audits, special studies, or inquiries as necessary to fulfill its duties.

ARTICLE 12

SECTION 12.01. Section 403.055, Government Code, is amended to read as follows:

Sec. 403.055. ISSUANCE TO DEBTORS PROHIBITED. (a) A warrant may not be issued to a person, or to the person's agent or assignee, if the person is indebted or owes delinquent taxes to the state, or owes delinquent taxes under a tax that the comptroller administers or collects, until the debt or taxes are paid.

(b) If a person owes delinquent taxes under a tax that the comptroller administers or collects, the comptroller may subtract the delinquent amount from the total amount due the person from the state, except from amounts due that are deemed to be current wages, and issue a warrant for the difference. The delinquent person is entitled to written notice of at least 20 days before the date of the offset. The notice must conform to the notice requirements under Sections 111.018(b)(1) through (3), Tax Code. The comptroller may promulgate rules for the administration of this section.

SECTION 12.02. This article takes effect January 1, 1992.

ARTICLE 13

SECTION 13.01. Section 17.179, Water Code, is amended by adding Subsection (d) to read as follows:

(d) With respect to projects for which financial assistance is made available under this chapter, the board shall file semiannually with the bond review board established under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), a report on the performance of loans made by the board in connection with the projects. The bond review board shall review the reports filed by the board under this subsection to assess the adequacy of the security for the bonds purchased. The filing dates and the contents of the reports must comply with any rules adopted by the bond review board.

SECTION 13.02. Subchapter F, Chapter 161, Natural Resources Code, is amended by adding Section 161.2111 to read as follows:

Sec. 161.2111. REPORT TO BOND REVIEW BOARD. With respect to purchases made under this chapter, the board shall file semiannually with the bond review board established under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), a report on the performance of loans made by the board in connection with the purchases. The bond review board shall review the reports filed by the board under this section to assess the performance of loans made under this chapter. The filing dates and the contents of the reports must comply with any rules adopted by the bond review board.

SECTION 13.03. Section 162.003, Natural Resources Code, is amended by adding Subsection (e) to read as follows:

(e) With respect to loans made under the program, the board shall file semiannually with the bond review board established under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), a report on the performance of the loans. The bond review board shall review the reports filed by the board under this subsection to assess the performance of loans made under the program. The filing dates and the contents of the reports must comply with any rules adopted by the bond review board.

SECTION 13.04. Subchapter B, Chapter 21, Parks and Wildlife Code, is amended by adding Section 21.1061 to read as follows:

Sec. 21.1061. REPORT TO BOND REVIEW BOARD. The commission shall file with the bond review board established under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), a report on the performance of the interest and sinking fund and the development fund. The bond review board shall review the reports filed by the commission under this section to assess the performance of the funds in repaying bonds issued under this chapter. The filing dates and the contents of the reports must comply with any rules adopted by the bond review board.

SECTION 13.05. Section 52.17, Education Code, is amended by adding Subsection (f) to read as follows:

(f) With respect to loans granted under this chapter, the board shall file semiannually with the bond review board established under Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), a report on the performance of the loans and the interest and sinking fund. The bond review board shall review the reports filed by the board under this subsection to assess the performance of the loans under this chapter and the interest and sinking fund. The filing dates and the contents of the reports must comply with any rules adopted by the bond review board.

ARTICLE 14

SECTION 14.01. Section 55.13, Education Code, is amended to read as follows:

Sec. 55.13. AUTHORITY TO ISSUE REVENUE BONDS. (a) For the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and/or equip any property, buildings, structures, activities, services, operations, or other facilities, for and on behalf of its institution or institutions, or any branch or branches thereof, each board may issue its revenue bonds from time to time and in one or more issue or series, to be payable from and secured by liens on and pledges of all or any part of any of the revenues, income, or receipts of the board and its institution or institutions, or any branch or branches thereof, including, without limitation, any rentals, rates, charges, fees, or other resources, in the manner provided by this subchapter.

(b) With respect to all institutions the Texas Public Finance Authority shall exercise the authority of a board to issue revenue bonds on behalf of such institution or institutions, or any branch or branches thereof, in the manner provided by this subchapter, including the authority to issue refunding bonds under Section 55.19 of this code. In connection with the issuance of bonds under this chapter, the Texas Public Finance Authority has all of the rights and duties granted or assigned to, and is subject to the same conditions as, a board under this chapter. This subsection does not apply to The University of Texas System, The Texas A&M University System, or a component of those systems to an institution authorized to issue bonds under Article VII, Section 17, of the Texas Constitution, or to bonds authorized to be issued by any of those systems, components, or institutions.

SECTION 14.02. Section 55.171(a), Education Code, is amended to read as follows:

(a) The board of regents of the University of Houston may acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the University of Houston at Clear Lake City, and for these purposes may request the Texas Public Finance Authority to issue revenue bonds on behalf of the University of Houston pursuant to this subchapter. The board may pledge irrevocably to the payment of these revenue bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at the University of Houston or the University of Houston at Clear

Lake City, or both; and the amount of any pledge so made shall never be reduced or abrogated while the bonds are outstanding. However, the tuition charges shall not be pledged pursuant to the authority granted by this subsection except to the payment of bonds issued in an aggregate principal amount not to exceed \$40 million for the purpose of providing funds to acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, and facilities for the University of Houston at Clear Lake City.

SECTION 14.03. Subchapter B, Chapter 55, Education Code, is amended by adding Section 55.1712 to read as follows:

Sec. 55.1712. LAREDO STATE UNIVERSITY. (a) The board of regents of The Texas A&M University System may acquire, purchase, construct, improve, enlarge, and equip property, buildings, structures, facilities, roads, and related infrastructure for Laredo State University.

(b) The board may finance those items listed under Subsection (a) of this section through the issuance of bonds under this subchapter and in accordance with its existing system-wide revenue financing program. The board may pledge irrevocably to the payment of those bonds all or any part of the aggregate amount of student tuition charges required or authorized by law to be imposed on students enrolled at Laredo State University. The amount of a pledge made under this subsection may not be reduced or abrogated while the bonds for which the pledge is made, or bonds issued to refund those bonds, are outstanding.

(c) Bonds issued under this section may not be issued in an aggregate principal amount exceeding \$30 million.

SECTION 14.04. Section 435.041, Government Code, is amended to read as follows:

Sec. 435.041. BORROWING MONEY; ISSUING AND SELLING BONDS. (a) The board from time to time may borrow money and may request the Texas Public Finance Authority, on behalf of the board, to issue and sell fully negotiable bonds to acquire one or more building sites or buildings or to construct, remodel, repair, or equip one or more buildings.

(b) The Texas Public Finance Authority [board] may sell the bonds in any manner it determines to be in the best interest of the board, except that it may not sell a bond that has not been approved by the attorney general and registered with the comptroller. The Texas Public Finance Authority is subject to all rights, duties, and conditions set forth in this subchapter with respect to the issuance of bonds by the board, including the issuance of refunding bonds under Section 435.048.

SECTION 14.05. Section 435.048(a), Government Code, is amended to read as follows:

(a) The board may request the Texas Public Finance Authority to issue refunding bonds to refund any outstanding bonds that the board, or the Texas Public Finance Authority on behalf of the board, has lawfully issued, and interest on the bonds. The Texas Public Finance Authority [board] may issue the refunding bonds in exchange or substitution for outstanding bonds or may sell the refunding bonds and use the proceeds to pay or redeem outstanding bonds.

SECTION 14.06. Section 465.022, Government Code, as amended by Section 7, S.B. 543, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

Sec. 465.022. BONDS AUTHORIZED. (a) The commission may issue, sell, and deliver general obligation bonds of the state and may issue, sell, and deliver or cause any financing corporation to issue, sell, and deliver revenue bonds. The proceeds of the bonds may be used to carry out eligible undertakings, to make loans to fund or otherwise fund eligible undertakings carried out by others, to pay the cost of interest on any bonds for the period specified in the resolution authorizing the bonds, to fund required reserves relating to any bonds, and to pay the costs of

issuance of any bonds and the administration of the proceeds. The principal amount of general obligation bonds authorized by this section may not exceed \$500 million and the principal amount of revenue bonds authorized by this section, which are payable from money appropriated to the commission by the legislature for that purpose or which are payable from or secured by rents, installment payments, or other payments or revenues appropriated from time to time by the legislature for the payment of lease, contract, or other obligations of the commission, may not exceed \$500 million.

(b) The Texas Public Finance Authority shall exercise the authority of the commission to issue bonds under this subchapter, including the issuance of refunding bonds. The Texas Public Finance Authority is subject to all rights, duties, and conditions set forth in this subchapter with respect to the issuance of bonds by the commission.

SECTION 14.07. Section 21.001, Parks and Wildlife Code, is amended to read as follows:

Sec. 21.001. ISSUANCE OF PARK DEVELOPMENT BONDS. The department, by resolution of the commission, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$75 million pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution. All bonds provided for under this section shall be issued by the Texas Public Finance Authority, acting on behalf of the department. In connection with the issuance of such bonds, the Texas Public Finance Authority is subject to all rights, duties, and conditions set forth in this chapter with respect to the issuance of bonds by the department.

SECTION 14.08. Sections 4 and 5, Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 4. COMPOSITION OF GOVERNING BOARD. The authority is governed by a board of directors composed of ~~six~~ three members appointed by the governor with the advice and consent of the senate.

Sec. 5. TERMS. Members of the board are appointed for staggered terms of six years with ~~two members' terms~~ [one member's term] expiring on February 1 of each odd-numbered year.

SECTION 14.09. The Texas Public Finance Authority Act (Article 601d, Vernon's Texas Civil Statutes) is amended by adding Section 9B to read as follows:

Sec. 9B. AUTHORITY TO ACT AS ISSUER. (a) With respect to all bonds authorized to be issued by the Texas National Guard Armory Board, Texas National Research Laboratory Commission, Parks and Wildlife Department, and all institutions of higher education authorized to issue bonds under Chapter 55, Education Code, the authority has the exclusive authority to act on behalf of those entities in issuing bonds on their behalf. In connection with those issuances and with the issuance of refunding bonds on behalf of those entities, the authority is subject to all rights, duties, and conditions surrounding issuance previously applicable to the issuing entity under the statute authorizing the issuance. All references in an authorizing statute to the entity on whose behalf the bonds are being issued apply equally to the authority in its capacity as issuer on behalf of the entity.

(b) This section does not apply to The University of Texas System, The Texas A&M University System, or a component of those systems, to an institution of higher education authorized to issue bonds under Article VII, Section 17, of the Texas Constitution, or to bonds authorized to be issued by any of those systems, components, or institutions.

SECTION 14.10. Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), is amended by adding Section 8 to read as follows:

Sec. 8. LIMITATION ON DEBT PAYABLE FROM GENERAL REVENUE FUND. (a) The legislature may not authorize additional state debt if

the resulting annual debt service exceeds the limitation imposed by this section. The maximum annual debt service in any fiscal year on state debt payable from the general revenue fund may not exceed five percent of an amount equal to the average of the amount of general revenue fund revenues, excluding revenues constitutionally dedicated for purposes other than payment of state debt, for the three immediately preceding fiscal years.

(b) For purposes of this section, "state debt payable from the general revenue fund" means general obligation and revenue bonds, including authorized but unissued bonds, and lease-purchase agreements in an amount greater than \$250,000, which bonds or lease purchase agreements are designed to be repaid with the general revenues of the state. The term does not include bonds that, although backed by the full faith or credit of the state, are reasonably expected to be paid from other revenue sources and that are not expected to create a general revenue draw. Bonds or lease purchase agreements that pledge the full faith and credit of the state will be considered to be reasonably expected to be paid from other revenue sources if they are designed to receive revenues other than state general revenues sufficient to cover their debt service over the life of the bonds or agreement. In the event such bonds or agreement, or any portion thereof, subsequently requires use of the state's general revenue for payment, the bonds or agreement, or such portion thereof, will be considered to be a "state debt payable from the general revenue fund" within the definition of this section, until one of the following events occurs:

(1) the bonds or agreement are backed by insurance or other form of guarantee that will ensure payment from other than general revenue; or

(2) the issuer demonstrates to the satisfaction of the bond review board that the bonds will no longer require a general revenue draw, and the bond review board so certifies to the Legislative Budget Board.

SECTION 14.11. Each member of the board of the Texas Public Finance Authority who is serving on the board on the effective date of this article remains a member of the board for the duration of the term for which the person was appointed.

SECTION 14.12. As soon as possible after the effective date of this article, the governor shall appoint three additional members to the board of directors of the Texas Public Finance Authority, one to a term expiring February 1, 1993, one to a term expiring February 1, 1995, and one to a term expiring February 1, 1997.

SECTION 14.13. This article takes effect January 1, 1992.

ARTICLE 15

SECTION 15.01. Subchapter G, Chapter 130, Education Code, is amended by adding Sections 130.126 through 130.130 to read as follows:

Sec. 130.126. LONG-TERM NOTES. (a) The governing board of a public junior college district or regional college district located in one or more counties having a total population of at least 100,000 according to the last preceding federal census may issue notes to pay expenses of asbestos cleanup and removal in the district.

(b) Notes issued under this section must be secured by a designated portion of the issuer's revenues, which may include ad valorem maintenance taxes, and must mature not later than the first day of the 15th year after the date on which the notes are issued.

(c) A note issued under this section is debt under Section 26.012, Tax Code.

(d) Except as provided by Subsection (b) of this section, the governing board of a public junior college district or regional college district must issue the notes in the manner provided by the Bond Procedures Act of 1981 (Article 717k-6, Vernon's Texas Civil Statutes, as amended).

Sec. 130.127. REFUNDING NOTES. The governing board of a public junior college district or regional college district may issue refunding notes to refund

notes issued under Section 130.126 of this code in the manner and for the purposes provided by Chapter 503, Acts of the 54th Legislature, Regular Session, 1955 (Article 717k, Vernon's Texas Civil Statutes, as amended).

Sec. 130.128. SALE OF NOTES. (a) The governing board of a public junior college district or regional college district may sell notes or refunding notes issued under this subchapter at a public or private sale and at a price that the board determines is adequate.

(b) The governing board of a public junior college district or regional college district shall deposit proceeds from the sale of notes issued under this subchapter in the district's general revenue fund.

(c) Proceeds from the sale of notes issued under this subchapter may be used to pay the costs of issuing, marketing, or distributing the notes.

Sec. 130.129. INTEREST RATE. Notes and refunding notes issued under this subchapter must bear interest at a rate not to exceed the rate provided by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-2, Vernon's Texas Civil Statutes, as amended).

Sec. 130.130. NOTES ARE NOT TAX BONDS. Notes and refunding notes issued under this subchapter are not tax bonds under Section 130.122 of this code, and an election is not required before the governing board of a public junior college district or regional college district may issue such notes or refunding notes.

ARTICLE 16

SECTION 16.01. Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes), is amended by adding Sections 7A and 7B to read as follows:

Sec. 7A. DEBT STATISTICS. (a) Not later than October 31 of each even-numbered year, the board shall submit a report to the legislature that contains statistical information concerning state bonds and the bonds and other debt obligations issued by local governments.

(b) As to state bonds and the bonds and other debt obligations of local governments, the report shall include:

- (1) total debt service as a percentage of total expenditures;
- (2) tax-supported debt service as a percentage of general revenue expenditures;
- (3) per capita total debt and per capita tax-supported debt;
- (4) total debt and tax-supported debt as a percentage of personal income;
- (5) total personal income per capita;
- (6) total debt per capita as a percentage of total personal income per capita;
- (7) total debt and tax-supported debt as a percentage of real property valuations;
- (8) total debt and tax-supported debt as a percentage of annual revenues and expenditures;
- (9) principal required to be repaid in five years and principal required to be repaid in 10 years;
- (10) growth rates of total debt per capita and total debt per dollar of personal income;
- (11) recent trends in the issuance of short-term notes;
- (12) recent trends in costs of issuance;
- (13) savings from any recent refundings;
- (14) recent trends in use of capitalized interest;
- (15) debt service coverage ratios where applicable; and
- (16) other information considered relevant by the board.

(c) State agencies and local governments shall in a timely manner provide the board with all information reasonably believed by the board to be necessary to prepare the board's report to the legislature.

Sec. 7B. REVIEW OF CAPITAL IMPROVEMENT PLANS. Not later than December 31 of each even-numbered year, the board shall review and make recommendations to the legislature on the six-year strategic capital improvement plan submitted to the board under Article 6252-32, Revised Statutes. The board shall make recommendations on the structure and timing of the debt financing of each capital improvement included in the plan.

SECTION 16.02. Title 110A, Revised Statutes, is amended by adding Article 6252-32 to read as follows:

Art. 6252-32. CAPITAL IMPROVEMENT PLANS

Sec. 1. DEFINITIONS. In this article:

(1) "Appropriated funds" means funds appropriated by the General Appropriations Act.

(2) "Board" means the Legislative Budget Board.

(3) "Capital improvement" means any building or infrastructure project that will be owned by the state and built with direct appropriations or with the proceeds of state-issued bonds designed to be repaid with the general revenues of the state. The term does not include a building or project financed with bonds that, although backed by the full faith and credit of the state, are reasonably expected to be paid from other revenue sources and that are not expected to create a general revenue draw.

(4) "State agency" means a governmental entity that expends appropriated funds.

Sec. 2. ADOPTION AND SUBMISSION OF PLAN. (a) Not later than October 31 of each even-numbered year, the governor and the board shall jointly adopt a six-year strategic capital improvement plan.

(b) The governor shall submit the plan to:

(1) the bond review board for review under Section 7B, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes); and

(2) the legislature.

Sec. 3. CONTENTS OF PLAN. (a) Each six-year strategic capital improvement plan must include:

(1) a description of the capital improvement needs of state agencies during the six-year period;

(2) a prioritization, if appropriate, of the capital improvement needs of state agencies during the six-year period;

(3) an estimate as to how the capital improvement needs may be financed during the six-year period;

(4) recommended debt limits for the six-year period; and

(5) estimates of operating budget impacts of capital improvements.

(b) The board shall develop and periodically revise the criteria to be used to determine whether a proposed capital improvement project, or acquisition or expenditure for capital improvements, may be included in a six-year strategic capital improvement plan. The board shall obtain the advice and recommendations of the bond review board before developing or revising the criteria.

Sec. 4. COOPERATION BY STATE AGENCIES. (a) The governor and the board shall solicit the advice and recommendations of each state agency before adopting a six-year strategic capital improvement plan. In formulating a six-year strategic capital improvement plan, the governor and the board shall take into account each agency's strategic plan for operations, as developed under Article 6252-31, Revised Statutes.

- (b) The governor and the board may require a state agency to:
- (1) submit information, reports, plans, and documentation;
 - (2) answer inquiries; and
 - (3) cooperate in the preparation of any plan.

Sec. 5. ADVISORY COMMITTEE. (a) The governor and the board may establish an advisory committee composed of officers and employees of the Department of Information Resources, the State Purchasing and General Services Commission, the bond review board, and other state agencies. The committee shall advise the governor and the board as to the development and content of a six-year strategic capital improvement plan.

(b) The advisory committee members' service on the committee is an additional duty of their respective offices or employments.

SECTION 16.03, Chapter 316, Government Code, is amended by adding Subchapter F to read as follows:

SUBCHAPTER F. ACQUISITIONS OF CAPITAL IMPROVEMENTS

Sec. 316.051. DEFINITIONS. In this subchapter:

(1) "Appropriated funds" means money appropriated by a General Appropriations Act.

(2) "Board" means the bond review board established by Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).

(3) "Capital improvement" has the meaning assigned by Section 1, Article 6252-32, Revised Statutes, and includes equipment.

(4) "Equipment" has the meaning assigned by Section 1A(7), Chapter 5, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 601d, Vernon's Texas Civil Statutes).

(5) "Obligations" has the meaning assigned by Section 1A(8), Chapter 5, Acts of the 68th Legislature, 2nd Called Session, 1984 (Article 601d, Vernon's Texas Civil Statutes).

(6) "Six-year strategic capital improvement plan" means the plan referred to by that term adopted under Article 6252-32, Revised Statutes.

Sec. 316.052. CAPITAL BUDGET. A capital budget for a biennium consists of a summary of capital improvement purchases based on the six-year strategic capital improvement plan to be funded under a proposed General Appropriations Act.

Sec. 316.053. REVIEW OF CAPITAL BUDGET. (a) A capital budget shall be delivered to the board for review and recommendations.

(b) For each capital improvement acquisition included in a capital budget, the board shall:

(1) recommend whether the capital improvement should be purchased with current appropriations or through the incurrence of debt;

(2) recommend the method for and timing of the incurrence of any recommended debt; and

(3) report on the impact any recommended incurrence of debt would have on the state.

(c) The board may adopt rules and procedures to administer this section.

Sec. 316.054. PROHIBITIONS. (a) Except as provided by Subsection (b), a state agency may not use appropriated funds to acquire a capital improvement unless:

(1) a General Appropriations Act appropriates funds for the acquisition; and

(2) the acquisition complies with the debt issuance plan for the biennium, if it is to be acquired through the incurrence of debt.

(b) The legislature may appropriate money and the state agency receiving the appropriation may use the appropriated funds to acquire a capital improvement

that is not included in the current six-year strategic capital improvement plan if a natural disaster, emergency, or other change in circumstances makes the acquisition necessary.

Sec. 316.055. CAPITAL BUDGET EXPENDITURE PLANS. (a) A capital budget expenditure plan for a biennium consists of the provisions in a General Appropriations Act as to whether capital improvements funded in the Act shall be purchased with current appropriations or through the incurrence of debt.

(b) In adopting a capital budget expenditure plan, the legislature shall consider:

(1) recommendations of the board; and

(2) the debt statistics submitted by the board under Sections 7A and 7B, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).

Sec. 316.056. DEBT ISSUANCE PLANS. (a) A debt issuance plan for a biennium consists of the provisions in a General Appropriations Act as to the method for and timing of incurring debt to acquire capital improvements in the capital budget.

(b) In adopting a debt issuance plan, the legislature shall consider:

(1) recommendations made by the board under Section 316.053(b);

and

(2) debt statistics submitted by the board under Sections 7A and 7B, Chapter 1078, Acts of the 70th Legislature, Regular Session, 1987 (Article 717k-7, Vernon's Texas Civil Statutes).

(c) A debt issuance plan may direct the board to issue obligations to finance:

(1) the acquisition of a capital improvement if the improvement is equipment; and

(2) multiple acquisitions of capital improvements if the improvements are equipment.

ARTICLE 17

SECTION 17.01. Title 110A, Revised Statutes, is amended by adding Article 6252-5f to read as follows:

Art. 6252-5f. INDIRECT COST RECOVERY PROGRAM

Sec. 1. DEFINITIONS. In this article:

(1) "Indirect cost" means the cost of administering a state or federally funded program, other than the actual cost of the program and includes the costs of providing statewide support services.

(2) "Federally reimbursable indirect costs" means costs, as defined by Federal Management Circular A-87 or subsequent revisions of or successors to that circular, that are incurred by state agencies in support of federally funded programs and that are eligible for reimbursement from the federal government, excluding research programs at institutions of higher education which are funded by federal grants.

(3) "State agency" means any department, board, commission, or other entity that is in the executive branch of state government, has statewide jurisdiction, and administers one or more programs to provide services to the public or regulation of persons engaged in an occupation or activity.

Sec. 2. STATEWIDE COST ALLOCATION PLAN. (a) The office of the governor shall annually prepare a statewide cost allocation plan to identify the costs of providing statewide support services to each state agency, including costs for auditing, accounting, budgeting, centralized purchasing, and legal services. The plan shall also allocate to each state agency an appropriate portion of the total costs of statewide support services and identify, to the extent possible, how much of the portion is reimbursable by the federal government.

(b) The office of the governor shall distribute a copy of the plan to each state agency.

Sec. 3. AGENCY RECOVERY OF INDIRECT COSTS. (a) Each state agency that receives federal funds or charges any fee for any of its services shall prepare an annual indirect cost recovery plan. The plan must include proposals to recover the indirect costs of the agency's programs, including the portion of statewide support services allocated under the statewide cost allocation plan. A state agency that receives federal funds shall also prepare a separate schedule indicating the federally reimbursable indirect costs.

(b) A state agency shall implement its indirect cost recovery plan by applying for federally reimbursable indirect costs and, when permitted by law, by setting fees and billing rates at sufficient amounts to recover the indirect costs of that agency.

(c) The office of the governor shall provide technical assistance to state agencies, on request, in their development of indirect cost recovery plans.

Sec. 4. REIMBURSEMENT OF GENERAL REVENUE FUND. (a) If a state agency receives federally reimbursable indirect costs, the state agency shall send to the state treasurer for deposit to the credit of the general revenue fund the lesser of:

(1) the amount received as federally reimbursable indirect costs; or

(2) the amount allocated to the state agency in the governor's statewide cost allocation plan for the cost of providing statewide support services to that state agency.

(b) In addition to revenue from other sources, the legislature may appropriate the estimated amount to be received by a state agency as federally reimbursable indirect costs during any fiscal biennium to the agency for any purpose. If the amount recovered by the agency during the fiscal biennium exceeds the estimated amount, the excess amount may be included in the appropriation for that agency.

(c) Subsection (a) of this section does not apply to funds received by an agency as federally reimbursable indirect costs to the extent that the agency has previously paid another state agency for the services that have been reimbursed.

SECTION 17.02. Each state agency shall adopt and implement an initial indirect cost recovery plan under Article 6252-5f, Revised Statutes, as added by this Act, not later than January 1, 1992.

ARTICLE 18

SECTION 18.01. Section 317.002, Government Code, is amended to read as follows:

Sec. 317.002. TYPES OF [GOVERNOR'S] PROPOSALS TO AFFECT APPROPRIATIONS. (a) The governor or Legislative Budget Board may propose that a state agency be prohibited from spending, obligating the expenditure of, or distributing part or all of an appropriation made to the agency unless the amount is reappropriated by the legislature or is released, or expenditures are approved, as provided in the proposal.

(b) After finding that an emergency exists, the governor or Legislative Budget Board may propose that the authority to spend, obligate the expenditure of, or distribute part or all of an appropriation made to a state agency:

(1) be transferred to another state agency to be used for a specified purpose; or

(2) be retained by the agency to which the appropriation was made but used for a purpose different from or additional to the purpose for which the appropriation was made.

(c) The governor or Legislative Budget Board may propose a change in the time that an appropriation is distributed or otherwise made available to a state agency, whether the time of distribution or availability is set by appropriations act or general law.

SECTION 18.02. The heading to Section 317.003, Government Code, is amended to read as follows:

Sec. 317.003. TIME AND SCOPE OF ~~GOVERNOR'S~~ PROPOSAL.

SECTION 18.03. Subsection (a), Section 317.003, Government Code, is amended to read as follows:

(a) The governor or Legislative Budget Board may make a proposal at any time except during a regular or special session of the legislature. A proposal may apply to an appropriation that has been made for any specified fiscal year that has not ended at the time the proposal is made.

SECTION 18.04. Sections 317.004, 317.005, 317.006, and 317.007, Government Code, are amended to read as follows:

Sec. 317.004. PUBLICATION OF PROPOSAL. The entity making a proposal ~~governor~~ shall specify the details of the ~~[a]~~ proposal, including, for a proposal made under Section 317.002(b), a statement describing the emergency. The entity making a proposal ~~governor~~ shall direct the secretary of state to publish each proposal, including any accompanying statements, in the Texas Register.

Sec. 317.005. ~~[LEGISLATIVE—BUDGET—BOARD]~~ ACTION ON PROPOSAL. (a) After a governor's proposal under this chapter is published in the Texas Register, the Legislative Budget Board may conduct a public hearing on the proposal. The board shall give notice of a hearing under this section in the manner provided by law for notice of regular meetings of the board. The board also shall provide notice by mail of its meetings to each member of the legislature. The notice of the meeting must include a description of the nature of the proposal or order to be considered. If the agenda includes a public hearing on a proposal, the notice must so state.

~~[(b)]~~ After a hearing and at a meeting held not less than 10 days after the date notice of the meeting was given in the manner provided for regular board meetings, in response to a governor's proposal the board, subject to the restrictions provided by Subsection (e), may:

- (1) ratify the proposal by adopting an order changing the relevant appropriation in the manner specified in the proposal;
- (2) reject the proposal; or
- (3) recommend changes in the proposal.

(b) In response to a proposal by the board, the governor may take any action specified by Subsection (a) for board action on a governor's proposal.

(c) A recommended change in a proposal may include recommendations for a change in:

- (1) the proposed amount of money withheld or transferred;
- (2) the proposed purpose for which the appropriation may be used;
- (3) the proposed period for which an appropriation may not be expended, obligated, or distributed;
- (4) the source or recipient of a proposed transfer; or
- (5) a proposed time of distribution or availability of the appropriation that is the subject of the proposal.

(d) If the governor or the board recommends a change in a ~~governor's~~ proposal by the other entity, the recommending entity ~~board~~ may adopt a contingent order changing the relevant appropriation in the manner specified in the ~~board~~ recommendations.

(e) Neither the governor nor the ~~The~~ board may ~~not~~ adopt an order under this section:

- (1) expressly postponing the time, whether set by appropriations act or general law, that an appropriation is distributed or otherwise made available to a state agency, for a period that exceeds 180 days;
- (2) reducing or eliminating an appropriation for the salary of an elected state official or a member of a board or commission appointed by the governor; or

(3) reducing or eliminating an appropriation to a state agency that receives appropriations under Article VI of the General Appropriations Act; ~~or~~
 [(4) if, after the order takes effect, the total appropriation for any affected state agency for the fiscal year in which the order would be effective would be decreased by more than 10 percent, or increased by more than five percent, from the amount set by the legislature for that fiscal year].

(f) The governor or ~~[Subject to the limitation provided by Subsection (c)(4); the]~~ board may adopt an order under this section withholding or transferring any portion of the total amount appropriated to finance the foundation school program for a fiscal year. The governor or board may not adopt such an order if it would result in an allocation of money between particular programs or statutory allotments under the foundation school program contrary to the statutory proration formula provided by Section 16.254(d), Education Code. The governor or board may transfer an amount to the total amount appropriated to finance the foundation school program for a fiscal year and may increase the basic allotment. The governor or board may adjust allocations of amounts between particular programs or statutory allotments under the foundation school program only for the purpose of conforming the allocations to actual pupil enrollments or attendance.

(g) The affirmative vote of a majority of the members of the board from each house is necessary for the adoption of an order by the board under this section.

(h) If either the governor or the board adopts an order under this section, the entity adopting the order ~~[board]~~ shall notify the proposing entity ~~[governor]~~, the comptroller, the state treasurer, and the affected state agencies. Unless the order is a contingent order, the entity adopting the order ~~[board]~~ shall file a copy of the order with the secretary of state for publication in the Texas Register.

Sec. 317.006. ~~[GOVERNOR'S]~~ ACTION ON CONTINGENT ORDER. The governor or board shall approve or reject each contingent order adopted under Section 317.005(d) by the other entity. The governor or board shall notify the other entity ~~[board]~~, the comptroller, the state treasurer, and the affected state agencies of the approval or rejection and shall direct the secretary of state to publish notice of the action in the Texas Register.

Sec. 317.007. EXPIRATION OF PROPOSAL OR CONTINGENT ORDER. A ~~[governor's]~~ proposal made by the governor or board under this chapter expires if the other entity ~~[board]~~ does not adopt an order ratifying or changing the proposal before the 31st day after the date the proposal is published in the Texas Register. A contingent order adopted by the governor or board under this chapter expires if the other entity ~~[governor]~~ does not approve the order before the 31st day after the date the proposal on which the order is based is published in the Texas Register. A ~~[governor's]~~ proposal or contingent order of either entity also expires if a regular or special session of the legislature begins before, respectively, the other entity ~~[board]~~ has ratified the proposal or ~~[the governor]~~ has approved the contingent order.

SECTION 18.05. Subsection (a), Section 317.008, Government Code, is amended to read as follows:

(a) An order adopted by the governor or the Legislative Budget Board under this chapter, other than a contingent order adopted under Section 317.005(d), takes effect on the date of adoption, unless the order specifies a later date. A contingent order adopted under Section 317.005(d) and approved ~~[by the governor]~~ under this chapter takes effect on the date of approval, unless the order specifies a later date.

ARTICLE 19

SECTION 19.01. Section 316.002, Government Code, is amended by adding Subsections (d) and (e) to read as follows:

(d) To ensure compliance with Article VIII, Section 22, of the Texas Constitution, the Legislative Budget Board may not transmit in any form to the

governor or the legislature the budget as prescribed by Section 322.008(c) or the appropriations bill as prescribed by Section 322.008(d) until the limit on the rate of growth of appropriations has been adopted as required by this subchapter.

(e) In the absence of an action by the Legislative Budget Board to adopt a spending limit as provided in Subsections (a) and (b), the estimated rate of growth in the state's economy from the current biennium to the next biennium shall be treated as if it were zero, and the amount of state tax revenues not dedicated by the constitution that could be appropriated within the limit established by the estimated rate of growth in the state's economy shall be the same as the level of appropriations for the current biennium.

ARTICLE 20

SECTION 20.01. Section 3.007(b), Texas Incentive and Productivity Act (Article 6252-29a, Vernon's Texas Civil Statutes), as amended by Chapter 150, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(b) From the funds in the state agency's or division's productivity bonus account, the commission shall award to the eligible employees of the agency or division an amount not to exceed 25 percent of the amount in that account. The awarded amount shall be distributed in equal shares to the eligible current employees of the agency or division. A bonus made to any individual employee may not exceed \$1,000 [\$5,000]. An eligible employee who worked in the agency or division for less than the full fiscal year or on a part-time basis is entitled to a pro rata share based on the fraction of the fiscal year and the average fraction of the work week that the employee worked in the agency or division. An eligible employee under this section is an employee who:

- (1) is an hourly, part-time, or temporary employee;
- (2) is a classified employee under the Position Classification Act of 1961 (Article 6252-11, Vernon's Texas Civil Statutes); or
- (3) performs functions that are equivalent to functions performed by a classified employee in other state agencies.

ARTICLE 21

SECTION 21.01. (a) Notwithstanding Subsection (a), Section 4, Chapter 16, Acts of the 71st Legislature, Regular Session, 1989, the comptroller of public accounts shall make the monthly payments from the General Revenue Fund to the state contribution account of the trust fund for the Teacher Retirement System of Texas for the months of June, July, and August of 1991 not later than August 31, 1991.

(b) If no portion of this Act may take effect in accordance with law before September 1, 1991, this section has no effect.

SECTION 21.02. (a) Notwithstanding Subsection (c), Section 403.093, Government Code, the comptroller may not make monthly payments from the general revenue fund to the state contribution account of the trust fund for the Teacher Retirement System of Texas during June, July, or August of 1993. Not later than September 3, 1993, the comptroller shall make the payments for those months deferred by this section.

(b) Each month in which any portion of a payment deferred by this section remains unpaid, the comptroller shall transfer to the state contribution account of the trust fund for the Teacher Retirement System of Texas from the general revenue fund an amount certified by the Teacher Retirement System of Texas that is equal to the greater of eight percent of or the rate of yield that would have been earned on the unpaid deferred amount if monthly contributions to the Teacher Retirement System of Texas had been made as provided by Subsection (c), Section 403.093, Government Code, for that month and for each previous month of the fiscal year in which the payments have been deferred as provided by this section, and had been invested.

ARTICLE 22

SECTION 22.01. (a) Section 13B, Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), is amended by adding Subsection (d) to read as follows:

(d) Each employee shall be enrolled in the premium conversion benefit portion of the cafeteria plan unless the employee notifies the trustee in writing that the employee elects not to be enrolled. Notwithstanding any provision of Section 16B of this Act to the contrary, the trustee may not establish a fee or charge for administering the premium conversion benefit portion of the cafeteria plan.

(b) An employee employed on the effective date of this article who is not enrolled in the premium conversion benefit portion of the cafeteria plan on that date shall be enrolled, in accordance with Section 13B(d), Texas Employees Uniform Group Insurance Benefits Act (Article 3.50-2, Vernon's Texas Insurance Code), as added by this Act, in the premium conversion benefit portion of the cafeteria plan unless the employee notifies the trustee that the employee elects not to be enrolled. The enrollment begins on the first day of the month beginning after the effective date of this article if the election is not made before the first day of that month.

SECTION 22.02. This article takes effect September 1, 1992.

ARTICLE 23

SECTION 23.01. Section 152.121, Tax Code, is amended to read as follows:

Sec. 152.121. ~~[AMOUNT OF] TAX SENT TO COMPTROLLER[; FREQUENCY OF REMITTANCE].~~ (a) The county tax assessor-collector shall send ~~[95 percent of]~~ the money collected from taxes and penalties imposed by this chapter to the comptroller~~;~~ and ~~shall retain five percent of the taxes and penalties collected under this chapter as fees of office or to be paid into the officers' salary fund of the county as provided by general law.~~

~~[(b) The state portion of the taxes collected under this chapter by a county tax assessor-collector shall be sent to the comptroller]~~ as follows:

(1) on the 10th day of each month if during the last preceding state fiscal year less than \$2 million of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector;

(2) once each week if during the last preceding state fiscal year \$2 million or more, but less than \$10 million, of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector; or

(3) daily (as collected) if during the last preceding state fiscal year \$10 million or more of the taxes and penalties imposed by this chapter was collected by the office of the county tax assessor-collector.

~~(b) [(c)]~~ Taxes on metal dealer plates collected by the State Department of Highways and Public Transportation shall be deposited by the department in the state treasury in the same manner as are other taxes collected under this chapter.

(c) If the amount of net collections under Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-1 et seq., Vernon's Texas Civil Statutes), is insufficient to cover the amount of those net collections authorized to be retained by a county as a percentage of the tax and penalties collected under this chapter, the comptroller shall on request of the county tax assessor-collector authorize the county to retain a portion of the tax and penalties collected under this chapter to cover the deficiency.

SECTION 23.02. Section 10(a), Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929 (Article 6675a-10, Vernon's Texas Civil Statutes), as amended by H.B. 1376, Acts of the 72nd Legislature, Regular Session, 1991, is amended to read as follows:

(a) Except as provided by Subsections (c-1), (c-2), (c-3), and (c-4) of this section, on Monday of each week each County Tax Collector shall deposit in the County Depository of his County to the credit of the County Road and Bridge Fund an amount equal to one hundred per cent (100%) of net collections made hereunder during the preceding week until the amount so deposited for the current calendar year shall have reached a total sum of Sixty Thousand Dollars (\$60,000), plus Three Hundred and Fifty Dollars (\$350) for each mile of county road, not to exceed five hundred (500) miles, maintained by the County according to the latest data available from the State Department of Highways and Public Transportation, plus an amount equal to five per cent (5%) of the tax and penalties collected under Chapter 152, Tax Code, in the preceding calendar year. All of the amount of the tax and penalties collected under Chapter 152, Tax Code, in the preceding calendar year that is retained by a county under this subsection shall be used for county road construction, maintenance, and rehabilitation, for bridge construction, maintenance, and rehabilitation, for purchase of right-of-way for road or highway purposes, or for relocation of utilities for road or highway purposes. On or before January 30 of each year, each county shall file a report, in a form promulgated by the State Department of Highways and Public Transportation, with the State Engineer-Director for the State Department of Highways and Public Transportation that accurately sets forth the amounts and purposes of all expenditures of the tax and penalties collected under Chapter 152, Tax Code, and retained by the county under this subsection.

SECTION 23.03. This article takes effect January 1, 1992.

ARTICLE 24

SECTION 24.01. Subsection (a), Section 153.502, Tax Code, is amended to read as follows:

(a) On or before the fifth workday after the end of each month, ~~[of the first 11 months of the fiscal year and on or before August 31 of each year]~~ the comptroller, after making the deductions for refund purposes, shall determine as accurately as possible, for the period since the latest determination under this subsection, the number of gallons of fuel used in motorboats on which the gasoline tax has been paid to this state, and on which refund of the tax has not been made and against which limitation has run for filing claim for refund of the tax. From the number of gallons so determined the comptroller shall compute the amount of taxes that would have been refunded under the law had refund claims been filed in accordance with the law.

SECTION 24.02. Section 153.503, Tax Code, is amended to read as follows:

Sec. 153.503. ALLOCATION OF GASOLINE TAX. On or before the fifth workday after the end of each month, ~~[of the first 11 months of the fiscal year and on August 31 of each year]~~ the comptroller, after making all deductions for refund purposes and for the funds derived from unclaimed refunds, shall allocate the net remainder of the taxes collected under Subchapter B of this chapter as follows:

(1) one-fourth of the tax shall be deposited to the credit of the available school fund;

(2) one-half of the tax shall be deposited to the credit of the state highway fund for the construction and maintenance of the state road system under existing law; and

(3) from the remaining one-fourth of the tax the comptroller shall:

(A) deposit to the credit of the county and road district highway fund all the remaining tax receipts until a total of \$7,300,000 has been credited to the fund each fiscal year; and

(B) after the amount required to be deposited to the county and road district highway funds has been deposited, deposit to the credit of the state highway fund the remainder of the one-fourth of the tax, the amount to be provided on the basis of allocations made each month of the fiscal year, which sum shall be used by the State Department of Highways and Public Transportation for the construction, improvement, and maintenance of farm-to-market roads.

SECTION 24.03. Section 153.504, Tax Code, is amended to read as follows:

Sec. 153.504. ALLOCATION OF DIESEL FUEL TAX. On or before the fifth workday after the end of each month, ~~[of the first 11 months of the fiscal year and on August 31]~~ the comptroller, after making deductions for refund purposes, and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter D of this chapter as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

SECTION 24.04. Section 153.505, Tax Code, is amended to read as follows:

Sec. 153.505. ALLOCATION OF LIQUEFIED GAS TAX. On or before the fifth workday after the end of each month, ~~[of the first 11 months of the fiscal year and on August 31]~~ the comptroller, after making deductions for refund purposes and for the administration and enforcement of this chapter, shall allocate the remainder of the taxes collected under Subchapter B of this chapter as follows:

(1) one-fourth of the taxes shall be deposited to the credit of the available school fund; and

(2) three-fourths of the taxes shall be deposited to the credit of the state highway fund.

SECTION 24.05. This article takes effect January 1, 1992.

ARTICLE 25

SECTION 25.01. Section 1, Chapter 215, Acts of the 71st Legislature, Regular Session, 1989 (Article 1182m, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 1. Pursuant to Article III, Section 52-a, of the Texas Constitution, any home-rule city with a population exceeding 100,000 ~~[780,000]~~ based on the most recent federal decennial census is authorized to create programs for the grant of public money to any organization exempt from taxation under Section 501(a) of the Internal Revenue Code of 1986 as an organization described in Section 501(c)(3) of that code for the public purposes of development and diversification of the economy of the state, elimination of unemployment or underemployment in the state, and development or expansion of commerce in the state. The grants shall be in furtherance of such public purposes and shall be used by the recipient as determined by the recipient's governing board for programs found by the home-rule city to be in furtherance of this Act and under conditions prescribed by the home-rule city.

ARTICLE 26

SECTION 26.01. The Uniform Statewide Accounting Project Act is enacted to read as follows:

Sec. 1. SHORT TITLE. This Act may be cited as the Uniform Statewide Accounting Project Act.

Sec. 2. DEFINITIONS. In this Act:

(1) "Committee" means the Project Advisory Committee.

(2) "Comptroller" means the comptroller of public accounts.

(3) "Project" means the Uniform Statewide Accounting Project.

(4) "Project director" means the director of the Uniform Statewide Accounting Project.

(5) "State agency" has the meaning assigned by Section 403.013, Government Code.

(6) "Uniform Statewide Accounting Project" encompasses all the components of the uniform statewide accounting system, as defined by Section 1, Article 4348e, Revised Statutes, as developed or revised by the committee, including:

(A) the Uniform Statewide Accounting System (USAS) and related subsystems;

(B) the Uniform Statewide Payroll System (USPS);

(C) the Human Resource Information System (HRIS);

(D) the Budget Execution and Monitoring System (BEAMS); and

(E) the statewide telecommunication network system.

Sec. 3. PROJECT. The Uniform Statewide Accounting Project is established as an agency within the executive branch of state government.

Sec. 4. PROJECT ADVISORY COMMITTEE. (a) The project advisory committee consists of:

(1) the comptroller, who shall be chairman;

(2) the governor;

(3) the lieutenant governor;

(4) the speaker of the house of representatives;

(5) the executive director of the Department of Information Resources;

(6) the state treasurer;

(7) the state auditor; and

(8) eight appointees of the governor, consisting of:

(A) an employee of the Legislative Budget Board;

(B) an individual with education experience;

(C) an individual with natural resources experience;

(D) an individual with criminal justice experience;

(E) an individual with human services experience;

(F) an individual with business regulation experience; and

(G) an individual with employee benefits experience.

(b) The committee shall meet monthly or at the call of the chairman. The governor, lieutenant governor, speaker of the house of representatives, and comptroller may designate another person to serve in the member's place on the committee. However, the designee of the governor must be an employee of the governor's office, the designee of the lieutenant governor must be a member of the senate, the designee of the speaker of the house of representatives must be a member of the house of representatives, and the designee of the comptroller must be an employee of the comptroller's office.

(c) The members of the committee are entitled to reimbursement of their expenses as provided by law.

(d) The committee shall review and make recommendations to the project director concerning matters relating to the project.

Sec. 5. PROJECT DIRECTOR. The comptroller shall appoint a project director to administer the project. The project director reports directly to the comptroller or chief deputy comptroller. An appointee must be qualified by training and experience to perform the duties of the project director.

Sec. 6. DUTIES OF PROJECT DIRECTOR; CONTRACTS. (a) The project director shall:

- (1) administer the project as provided by this Act;
- (2) employ and remove staff;
- (3) administer all funds entrusted to the project;
- (4) obtain necessary office space, equipment, and supplies for the project; and
- (5) contract for goods and services necessary to carry out the provisions of this Act.

(b) Contracts entered into by the project director are not subject to:

- (1) the State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes);
- (2) the Professional Services Procurement Act (Article 664-4, Vernon's Texas Civil Statutes); or
- (3) Chapter 454, Acts of the 65th Legislature, Regular Session, 1977 (Article 6252-11c, Vernon's Texas Civil Statutes).

(c) The project director must submit all proposed contracts for professional or consulting services and all proposed purchases of computer equipment or software to the committee and specifically to the executive director of the Department of Information Resources for review and recommendation before procurement.

Sec. 7. AGENCY COOPERATION. A state agency shall make available to the project director all records of the agency for purposes of developing and implementing the project. On implementation of the project the comptroller may require a state agency to replace its internal accounting and payroll system with project components to provide a standard approach to internal accounting.

Sec. 8. SUPPORT SERVICES. The comptroller shall provide support services for the project, including accounting, purchasing, and personnel services. The cost of the services shall be paid from funds appropriated to the comptroller. The comptroller may recover from a state agency the cost of implementation or use of any component of the project by the agency.

SECTION 26.02. Section 10.02, State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 10.02. SYSTEM OF TELECOMMUNICATIONS SERVICES. (a) The commission shall ~~plan, establish, and~~ manage the operation of a system of telecommunications services for all state agencies. Each agency shall identify its particular telecommunications services requirements and the site at which the service shall be provided.

(b) The commission shall fulfill the telecommunications requirements of each state agency to the extent possible and to the extent that funds are appropriated or available for this purpose.

(c) The commission, Department of Information Resources, and comptroller shall jointly develop functional requirements for a statewide system of telecommunications services for all state agencies. Existing networks, as configured on the effective date of this subsection, of institutions of higher education are exempt.

(d) The commission, Department of Information Resources, and comptroller shall develop requests for information and proposals for a statewide system of telecommunications services for all state agencies.

(e) The commission, Department of Information Resources, and comptroller shall [may] negotiate rates and execute contracts with telecommunications service

providers for services. ~~Those entities~~ ~~[The commission]~~ may acquire transmission facilities by purchase, lease, or lease-purchase, which shall be done on a competitive bid basis if possible. ~~Those entities~~ ~~[The commission]~~ may develop, establish, and maintain carrier systems necessary to the operation of the telecommunications system. The commission may own, lease, or lease-purchase any or all of the facilities or equipment necessary to provide telecommunications services.

(f) ~~(d)~~ All contracts with telecommunications carriers shall contain the provision that the commission or any participating agency may obtain any data relating to the costs to the state of parallel tolls.

SECTION 26.03. Section 10.03(a), State Purchasing and General Services Act (Article 601b, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) In order to insure efficient operation ~~[utilization]~~ of telecommunications systems at minimum cost to the state, the commission shall promulgate and disseminate to all agencies appropriate ~~[policies,]~~ guidelines, operating procedures, and telephone directories.

SECTION 26.04. The Information Resources Management Act (Article 4413(32j), Revised Statutes) is amended by adding Section 9A to read as follows:

Sec. 9A. TELECOMMUNICATIONS PLANNING AND POLICY. (a) The department shall establish plans and policies for a system of telecommunications services to be managed and operated by the State Purchasing and General Services Commission.

(b) The department, comptroller, and State Purchasing and General Services Commission shall develop a statewide telecommunications operating plan for all agencies that implements a statewide network and includes technical specifications that are binding on the managing and operating agency.

(c) On matters relating to statewide telecommunications issues the department shall:

(1) coordinate its duties in this section with the comptroller towards the goal of a single centralized telecommunications network; and

(2) coordinate with other agencies as appropriate.

(d) The department shall promulgate and disseminate to all agencies appropriate policies and standards that govern the cost-effective and efficient management, operation, and utilization of state telecommunications services.

(e) Each agency shall comply with the rules, policies, standards, and guidelines promulgated under this section.

SECTION 26.05. This article takes effect September 1, 1991, but only if any portion of this Act may take effect in accordance with law before the 90th day after the adjournment of the session of the legislature in which this Act is enacted; otherwise, this article takes effect on the first day of the first month that begins at least 90 days after the adjournment of that session of the legislature.

ARTICLE 27

SECTION 27.01. The state auditor shall conduct a financial and program audit on or before August 31, 1993, of the management, finances, and investment practices of the Teacher Retirement System of Texas.

ARTICLE 28

SECTION 28.01. The provisions of this Act take effect as provided by each article. If a provision of this Act does not have a specified effective date, or if the specified effective date is not effective, the provision takes effect on the earliest date permitted for a provision of this Act to take effect under Article III, Section 39, of the Texas Constitution.

SECTION 28.02. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several

days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force according to its terms, and it is so enacted.

The Conference Committee Report was read and was filed with the Secretary of the Senate.

MEMORIAL RESOLUTIONS

S.R. 185 - By Sims: In memory of Trace Gipson of Rankin.

S.R. 191 - By Lucio: In memory of James Gilbert Philen, Jr., of Brownsville.

S.R. 192 - By Barrientos: In memory of The Honorable Charles D. Mathews,

CONGRATULATORY RESOLUTIONS

H.C.R. 18 - (Tejeda): Paying tribute to all the individuals who have been honored by receiving the Purple Heart and commending the members of the Military Order of the Purple Heart for their exemplary contributions.

S.C.R. 19 - By Ratliff: Extending congratulations to Charles B. Smith upon his retirement from SWEPCO after 44 years of service.

S.R. 177 - By Haley: Recognizing Sheriff Aubrey Cole upon his retirement from his position as Jasper County Sheriff.

S.R. 178 - By Barrientos: Recognizing Evia B. Lehman, who recently retired after 42 years of distinguished service with the Austin State School.

S.R. 179 - By Barrientos: Recognizing Clarence Lehman who recently retired after 45 years of meritorious service with the Austin State School.

S.R. 180 - By Barrientos: Recognizing the Texas General Land Office and Ruth's Chris Steakhouse for their Town Lake Cleanup Campaign scheduled for Saturday, August 17, 1991.

S.R. 183 - By Ellis: Recognizing Lisa Luis, special assistant in the district office of Senator Rodney Ellis, for her exceptional work.

S.R. 184 - By Ellis: Recognizing Elizabeth L. Rangel, district office manager for Senator Rodney Ellis, for her outstanding accomplishments during her tenure.

S.R. 186 - By Sims: Recognizing Dolores Arredondo on the occasion of her 103rd birthday.

S.R. 187 - By Sims: Recognizing Mrs. Minta Grimes on the occasion of her 100th birthday.

S.R. 188 - By Sims: Recognizing Mrs. Clara Sparger Ivy of Robert Lee on the occasion of her 102nd birthday.

S.R. 189 - By Lucio: Honoring G. G. Garcia of Edinburg on the occasion of his retirement after a distinguished career of more than 40 years with the State Department of Highways and Public Transportation.

S.R. 190 - By Lucio: Honoring American Legion Post 205 for 71 years of exceptional service to the veterans of Brownsville.

ADJOURNMENT

On motion of Senator Brooks, the Senate at 8:12 a.m. adjourned, in memory of The Honorable John E. Birdwell, Jr., of Lubbock, and Mrs. Judy Carolyn Davenport of Longview, until 11:00 a.m. today.